

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17<sup>th</sup> DAY OF APRIL 1997

Original Application No. 1496 of 1994

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.S.DAS GUPTA, MEMBER(A)

Rajendra, S/o late Shri R.N. Singh  
R/o 108 B.C.Railway Quarter, Loco Colony  
10th Avenue, Allahabad, last employed  
as Driver, Northern Railway, Allahabad.

Applicant

(By Advocate Shri Dev Sharma)

Versus

1. Union of India through the General Manager  
Northern Railway, Baroda House, New Delhi
2. The Divisional Railway Manager, Northern  
Railway, Allahabad.
3. The Senior Divisional personnel Officer  
Northern Railway, Allahabad.

Respondents

(By Advocate Shri D.C. Saxena )

O R D E R (Reserved)

JUSTICE B.C.SAKSENA,V.C.

Through this OA the applicant challenges an order contained in ~~the~~ letter passed by respondent no.2 dated 2.5.94, (Annexure A-1 to Compilation No.I) which was in response to the applicant's representation dated 7.3.94. The said representation was rejected and it was stated that the applicant;s case has been re-examined and it was found that Rs.13,455.71p ~~which~~ was paid to the applicant correctly and nothing was due to be paid as claimed by the applicant in his representation dated 7.3.94.

2. The background to the claim may be noted. The applicant had filed a suit no.42 of 1983 in the court of Civil Judge Allahabad for recovery of Rs.13,492/-. The details were of is indicated in paragraph 4.1. The said suit was decreed by the Addl. Civil judge on 19.12.84 in the following terms:

B.C.S.

"The plaintiff's suit for recovery of Rs.10,811/- as reimbursement of deductions of rent and a sum of Rs.1200/-as interest to the date of the suit is decreed with costs. The plaintiff is also entitled to recover interest at the rate of 6% per annum for the period pendentelite and future till payment is fully made to the plaintiff. The plaintiff will also get Rs.100/- as special costs awarded to him."

3. The applicant's case is that on the respondents failure to satisfy the decree <sup>he</sup> moved for execution on 9.9.85 for recovery of Rs.15,940.05p. The break of which is as follows:

(a) Decretal amount	Rs.10,811.000
(b) Interest prior to suit on delayed payment of DCRG amount grant by the court	Rs. 1,200.00
(c) Court costs decreed	Rs. 2,111.50
(d) Pendentelite and future interest upto 15.9.85	Rs. 1,607.00
(e) Special costs	Rs. 100.00
(f) Execution costs including legal fee	Rs. 110.55
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Total	Rs.15,940.05
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4. The applicant's case is that the respondents deposited the said sum of amount of Rs.15,940.05 in the court of Civil Judge Allahabad through cheque dated 27.2.86. However, the applicant;s case is that he could not withdraw the amount since in the meantime an appeal had been filed by the Union of India in the court of Addl. District Judge, Allahabad. After coming into force of the Administrative Tribunals Act the appeal and the execution case both were transferred to this Tribunal and was

BCR

registered as TA 957/86 and TA 986/86. By a judgment dated 14.12.87 the appeal was partly allowed and the execution case was dismissed.

5. The applicant's case further is that due to certain discrepancies and error in calculating the period of recovery he filed a review petition which was numbered as R.A. 3/88 and was decided on 7.6.88. The review application was partly allowed. The applicant's case further is that keeping in view the judgment of the Tribunal in appeal and the review he became entitled to a sum of Rs.20,304.41p. Out of this according to the applicant the respondents made a payment of Rs.13,455.71p and the applicant's case is that a balance of Rs.6848.70 ~~was~~ ~~is~~ still due with interest at the rate of 12% per annum.

6. The applicant filed contempt petition no. 135/92 in T.A. 957/86. The contempt petition was dismissed. Copy of the order is Annexure A-5. A perusal of the order passed in the contempt petition shows that the Division Bench was satisfied with the plea of the respondents that after calculation of the deductions the applicant has been paid the amount to which he was entitled and he had accepted the said amount, therefore no willful disobedience can be said to have been committed as all the demands made by the applicant had been complied with. However, the Division Bench in the last paragraph of its order made an observation that " in case any amount is due it would be open for the applicant to give details of the same and if the respondents in fact find it correct they will pay the said amount to him. The notices are discharged."

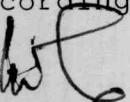
7. The applicant appears to have made a representation dated 28.4.94 to the Divisional Railway Manager with details of the amount due. The said representation has been rejected by the impugned order. Even after this ~~date~~ <sup>State</sup> ~~1/~~ <sup>for</sup>

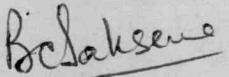
of litigations the applicant does not seem to be satisfied and has filed this OA. It is therefore necessary to analyse the ambit of scope of the observation made by the Division Bench in contempt petition no. 135/92. The said observation has already been quoted hereinabove and in our considered opinion the said observation was a direction to respondents to pay such amount which the respondents on a representation made by the applicant finds correct. The adjudication about the outstanding amount therefore was clearly left to the respondents. The respondents by the impugned order have stated that after consideration of the representation the amount of Rs.13,000 and odd paid to him was the correct amount and nothing else is due. There has to be a finality to a judgment and order. The applicant has availed all modes and has been litigating <sup>by</sup> ~~wants~~ filing this OA u/s 19 ~~will not permit~~ the applicant to <sup>wants</sup> settle the controversy. After the decision in the TA and the review petition the applicant had filed a contempt petition. As noted hereinabove the contempt petition was rejected and the Tribunal being satisfied that whatever was due to the applicant in light of the earlier orders has been paid to him. The observation in the last para of the contempt petition does not empower the applicant to treat ~~as~~ a fresh cause of action, <sup>having arisen by</sup> the rejection of his claim, with regard to the outstanding amount, by the respondents. If this is permitted to be done there would be no finality to any judicial proceedings. The applicant's main case in support of the claim is based on the footing that he was entitled to interest @ 12% whereas as noted hereinabove the suit was decreed with 6% interest. The other plea of the applicant is based on the assumption that the cost of the suit which <sup>was</sup> decreed is still outstanding to be paid. Once an appeal against the decree of the court is allowed, the said decree of the trial court merges in the order

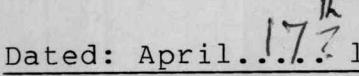
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passed by the Appellate court and since the Appellate court neither decreed cost of the appeal, in this case of the TA, there is no basis to assume that the cost decreed by the trial court is still outstanding. Even if this was the claim it was required to be urged before the Bench which decided the contempt petition. The contempt petition was in a way a mode of execution. The contempt petition was rejected by a Division Bench on being satisfied about the stand of the respondents that they have paid to the applicant the amount to which the applicant was entitled. The further observation cannot be construed in the manner in which the applicant seeks to construe it. The amount due, if any, is a decreetal amount OA is not a mode of execution.

8. In view of what has been indicated hereinabove, the OA is totally misconceived and is a classic example of the gross abuse of the process of the court. The OA is accordingly dismissed with costs to the respondents.

  
MEMBER(A)

  
VICE CHAIRMAN

  
Dated: April 17<sup>th</sup> 1997

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