

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 14th day of October 1996.

Original application No. 415 of 1995

Hon'ble Mr. D.S. Baweja, AM

R.S. Ojha, Ex-Gaurd 'A' Special,
Lucknow Division, C/o Shyam Narayan,
Advocate, I/6 Butlar Market, J.L.
Nehru Road, Allahabad.

..... Applicant.

C/A In person

Versus

1. Union of India through General
Manager, Northern Railway, Baroda House,
New Delhi.

2. Divisional Railway Manager, Northern
Railway, Lucknow.

..... Respondents.

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of the Administrative Tribunals Act 1985, praying for the reliefs:-

(a) payment of interest for the delay in payment at the rate of 18 per cent on the total sum as paid to the petitioner since the date of retirement on 30.6.87.

(b) Payment of compound rate of interest since the order dated 1.10.92 in O.A. 1011/88 (R.S. Ojha Vs. U.O.I.).

(c) Award of the cost of the contempt application No. 108/93 decided on 2.3.95 (R.S. Ojha Vs. D.P. Tripathi).

Contd...2....

(d) The applicant may be granted exemplary cost or any other relief by way of cost which is found suitable in the interest of justice.

2. The brief background based on which the above referred reliefs have been prayed for is as follows. The applicant retired from service on 30.6.87 while working as Gaurd 'A' Special from Lucknow Division under Northern Railway. The applicant filed an O.A. 1011/88 before this Bench for recalculation of pension and other benefits taking into account 75 per cent running allowance into consideration. This O.A. was subsequently transferred to Lucknow Bench and registered as T.L. 116/92 and was decided on 1.10.92 allowing the claim of the applicant for recalculation of pensionary benefits with 75 per cent of the running allowance as basic pay. For non compliance of this judgement, the applicant filed a Contempt application before Lucknow Bench No. 108/93. In the meantime S.L.P. was filed by the respondents and the stay was granted by the Hon'ble Supreme Court vide order dated 7.11.94. The S.L.P. was finally dismissed vide order dated 12.12.94. The Contempt application referred to above was thereafter decided vide order dated 2.3.95 with a direction that the applicant was also entitled to have leave encashment as a part of the retiral benefits.

3. The present application has been filed by the applicant claiming the reliefs as detailed as in para 1 above. The applicant prays that he had claimed interest from the date of retirement i.e. 30.6.87 on his pensionary benefits at the rate of 12 percent in O.A. 1011/88 and at the rate of 18 per cent in the Contempt application No. 108/93. However these claims were omitted to be considered

and no order passed in the said judgements. No order was also passed as to costs. The applicant has been paid Rs. 36815 towards the arrear of pension on re-fixation of pension and Rs. 7654 as leave encashment paid after the order dated 2.3.95 in the contempt application.

4. The respondents have filed the counter affidavit admitting the facts as brought out with regard to the various applications filed by the applicant and the judgements thereof. However it is submitted that the reliefs prayed for have been included in the earlier applications. The applicant also did not file any review application against the judgement dated 1.10.92 and 2.3.95 and as such these judgements have become final so far as the applicant is concerned. As such the applicant is not entitled to file a fresh application to re-agitate the matter with regard to the same reliefs which have been not allowed in the earlier applications. In view of these facts the Hon'ble Tribunal has no jurisdiction to entertain the present application. Further the application is also not maintainable on account of lack of jurisdiction of this Bench. It is because the applicant is being paid monthly pension at Pratapgarh which falls within the jurisdiction of Lucknow Bench. In view of these facts, the grounds taken by the applicant are not tenable in the eyes of the law, and the application deserves to be dismissed as not maintainable.

5. I have heard the learned counsel for the parties and also carefully gone through the material placed on the record.

6. ⁹ will first take up the issue of jurisdiction raised by the respondents. The respondents have stated

that the applicant is getting his pension at Pratapgarh which falls within the jurisdiction of Lucknow Bench. The applicant has countered this by stating that he is at present in residence at Allahabad and also practising in the Tribunal. Therefore getting pension at Pratapgarh is not very material fact to the issue of jurisdiction. We are inclined to agree with the contention of the applicant and do not find any merit in the submission of the respondents.

7. It is admitted fact that the applicant had sought a relief for payment of interest for delay in payment both in the O.A. No. 1011/88 as well as in the Contempt application 108/93. I have gone through the judgements in these applications. I find that claim for payment of interest for delay in payment which was made by the applicant was not specifically dealt with and rejected. The main issue which is to be determined is whether the reliefs which had been prayed for in the earlier applications and not specifically granted, the same can be agitated in a fresh application claiming for the same reliefs. The respondents have opposed the application stating that the application is not maintainable since no review application or appeal had been filed by the applicant ^{and} these two judgements have now become final and the same matter cannot be reagitated in a fresh O.A. The applicant on the other hand has defended the filing of the fresh O.A. on the plea that there is apparent error in the process of adjudication in granting these reliefs and therefore the present application is maintainable. After considering the rival contentions, we are of the opinion that the fresh application for the same reliefs included in the earlier applications which have been decided and the judgements have become final

is not maintainable. Such reliefs having been specifically claimed and having been not expressly granted must be deemed to have been refused. The applicant cannot therefore be permitted to reagitate the same issue in the present application. Such an application is barred by the principles of res-judicata and reliefs prayed for are not capable of being granted.

8. From the foregoing reasons, in my opinion the present application deserves to be rejected and is accordingly dismissed. *as not maintainable*

No order as to costs.

D. Singh
Member

Arvind.