

(9)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.646 OF 1995  
ALLAHABAD THIS THE 2nd DAY OF JANUARY, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.

Sri Vidya Bhushan,  
aged about 57 years,  
son of Sri Jiya Ram,  
Chief Engineer in MES,  
Standing panel of Arbitrators,  
5 Campbell Lines, Nehru Road,  
Lucknow Cantt-226002. .... Applicant

(By Advocate Shri B.P. Srivastava)

Versus

1. Union of India,  
through Secretary,  
Ministry of Defence,  
New Delhi.
2. Engineer in Chief,  
Kashmir House,  
Defence Head Quarters,  
P.O. New Delhi-110011. .... Respondents

(By Advocate Shri V.V. Mishra)

O R D E R

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

By this O.A. under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for a direction to respondents to pay him interest on the arrears at the rate of 18% per Annum with effect from 04.09.1971 i.e., from the date arrears became due upto 1st December, 1994 the date on which arrears were actually paid to him.

2. The facts giving rise to this application are that the applicant was selected by Union Public Service Commission as Assistant Executive Engineer on basis of the Engineering Services Examination held in 1960 and was appointed as Executive Assistant/Engineer in Military Engineering Services on 16.08.1962. As the applicant was not given promotion as

Executive Engineer and Superintending Engineer etc. though persons junior to him were granted such promotions, applicant filed Civil Misc. Writ Petition No.8930/83 before Hon'ble High Court Allahabad. The Writ Petition was transferred to this Tribunal under section 29 of Administrative Tribunals Act 1985, and was registered as T.A. No.639/87. This Tribunal allowed the application of the applicant and granted him relief. Para 13 of the Judgement, which contains direction of the Tribunal, is being reproduced below:-

"Having carefully considered all the relevant facts in the light of the decisions of the Hon'ble Supreme Court, we are of the view that the petitioner is entitled to his due seniority to be determined on the basis of the length of service and the year of recruitment and he should, therefore, be placed above the respondent no.3 and 4 in the seniority list for the reasons already stated above. Regarding his promotion and other benefits, we are of the view that the petitioner is entitled to the notional fixation of his pay in the rank of E.E. from the date (s) the respondent nos.3 and 4 were promoted but he will not be entitled to the difference in the arrears of pay of the two posts upto 04.09.1971, the date of the notification regarding his confirmation. From the date of this notification the petitioner shall be entitled to the difference in the pay up to the date of his promotion as E.E. The petitioner is further entitled for being considered for his promotion as SE from the date (s) the respondent nos.3 and 4 were promoted to this post and on being found suitable for the same he will be entitled to such promotion with all consequential benefits including the arrears of pay. The respondents 1 and 2 are directed to arrange for a review D.P.C. for this purpose within a period of three months from the date of the receipt of this order."

3. In pursuance of the aforesaid direction applicant was promoted as Executive Engineer and ~~Superintending~~ Senior Engineer and has also been paid arrears which were due to him. There is no dispute about the compliance of the direction given by this Tribunal. However, the grievance of the applicant is that the amount which was due to him was paid long after the order was passed by this Tribunal and he is entitled for the interest for the entire period namely from 04.09.71 to 01.12.94.

✓

4. Learned counsel for the applicant has submitted that there was unusual delay, applicant is entitled for relief. He has placed reliance on the judgement of this Tribunal Ernakulam Bench in O.A. 49/92 P.P.S. Dhanjjal Versus Union of India and others decided on 13.10.92.

5. Shri V.V. Mishra, learned counsel for the respondents on the other hand has submitted that the applicant cannot file a fresh O.A for claiming ~~xx~~ the interest on the amount which has been paid to him in pursuance of the order passed by this Tribunal in earlier O.A. He has placed reliance in case of Commissioner Income Tax, Bombay Versus T.P. Kumaran 1997 SCC (L&S) 135.

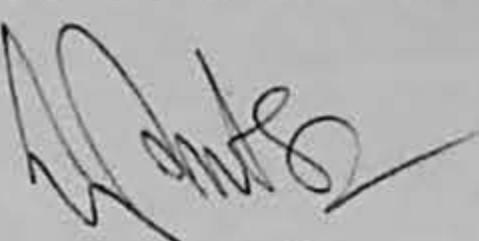
6. We have carefully considered the submission of counsel for the parties and perused the records.

7. There is no dispute that this Tribunal while granting relief to the applicant did not give any direction for paying interest on the arrears of pay which could be due to the applicant. The legal position is well settled that for interest alone subsequent O.A cannot be filed. Hon'ble Supreme court in case of Commissioner, Income Tax, Bombay Versus T.P. Kumaran (Supra) clearly held that subsequent proceedings could not be initiated for ~~releasing~~ <sup>payment of</sup> interest. The judgment of Ernakulam Bench is not helpful to the applicant in the present case, as in that case amount was not paid to the applicant on basis of the order passed by this Tribunal but the respondents had delayed the matter for long period of 19 years in paying the amount after correct fixation of his pay. On facts, this case is entirely different. Here the claim of the applicant is <sup>also</sup> barred by constructive res judicata. as the applicant ~~has also~~ <sup>could have</sup> prayed before the Tribunal in earlier O.A, that respondents may

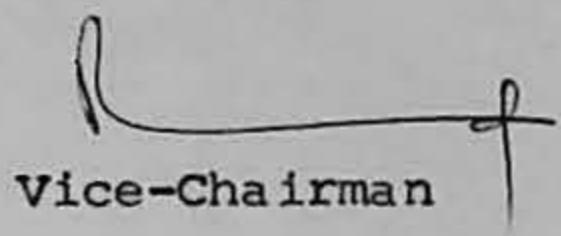
be directed to pay the interest <sup>on</sup> ~~on~~ arrears of pay.

8. In the facts and circumstances we do not find that applicant is entitled for the relief claimed. The O.A. has no merit and is accordingly dismissed.

9. There will be no order as to costs.



Member-A



Vice-Chairman

/Anand//