

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.304 of 2002.

Allahabad this the 28th day of May 2003.

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S.K. Agrawal, A.M.

Bhuneshwari Prasad,
S/o Late Shri Ram Narain Lal,
B/o Village and P.O. Tarya Lachhiram,
District Deoria retired on as Senior Clerk
in Personnel Department Workshop
District: Gorakhpur.

.....Applicant.

(By Advocate Sri Bashist Tiwari)

Versus.

1. Union of India
through General Manager
N.E. Railway, Gorakhpur.
2. Chief Works Manager (P)
N.E. Railway Workshop,
Gorakhpur.

.....Respondents.

(By Advocate : Sri K.P. Singh)

O_R_D_E_R

(HON'BLE MR.JUSTICE R.R.K. TRIVEDI, V.C.)

By this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order dated 13.09.2001 passed by the Chief Works Manager, (P), N.E. Rly., Workshop, Gorakhpur and for further direction to the respondents to fix the pay of the applicant amounting to Rs.660/- w.e.f. 01.10.1981 in place of Rs.640/- per month.

2. The facts in short giving rise to this dispute are that applicant was appointed on 28.06.1945 as Clerk. He ~~was~~ retired as Senior Clerk on attaining the age of superannuation

on 30.09.1982. After 9 years of his retirement, applicant filed O.A. No.924 of 1991 claiming relief that he should have been retired as Head Clerk as the punishment awarded to him ^{was} already over and his junior ~~was~~ Sri Ram Bedh Mishra ^{was} promoted as Head Clerk. It may be mentioned that issue of correct fixation of pay ought to have been raised in that O.A. also. The O.A. was allowed with following direction:

"Accordingly this application deserves to be allowed. The respondents are directed to restore the applicant's grade with effect from the date of punishment period was over notionally and accordingly his date of promotion may be shifted and the consequential benefits may also be given to him. The respondents are further directed to correct the seniority list and find out incase the record speaks that Sri Ram Bedh Misra was promoted in the year 1970, the same benefit should be given to the applicant as he was junior to him and incase this is found as a fact that the person who has filed a counter affidavit in this case stating that the promotion was given to Ram Bedh Misra as a result of restructuring scheme, action should be taken against him or information may be given to the Tribunal, so that proceedings under criminal procedure code may be taken against him in filing the affidavit which does not state correct statement of facts. Let a decision in this behalf be given within a period of 2 months from the date of communication of this order".

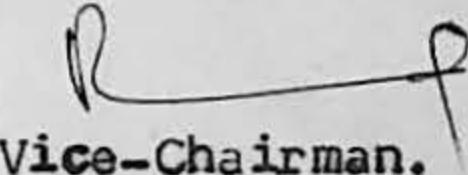
3. Thereafter the applicant filed contempt petition No.469 of 1993, showing grievance that the order has not been complied with. Contempt petition was rejected on 12.08.1999. The Bench rejecting the contempt petition noticed that the only grievance of the applicant was with regard to fixation of pay at Rs.660/- on 01.10.1981. Thereafter applicant again filed O.A. No.1500 of 1994. In this O.A. the applicant only claimed interest and did not raise any grievance with regard to wrong/non-fixation of pay. This O.A. was dismissed by order dated 16.09.1999.

in the present O.A. has been filed for relief which was not raised in earlier O.A's, mentioned above. Serious question for consideration is as to whether, the applicant can be allowed to raise this question now after filing two O.As. In our opinion, the applicant can not be permitted to raise this question after the O.A Nos. 924 of 1991 and 1500 of 1994 have been filed and decided. The relief claimed in present O.A. could and ought to have been claimed in previous O.As, but it was not done. The relief is barred by constructive res judicata. No litigant has right ~~for~~ ^{to have and} unending cause of action ^{before} to be agitated the Court. Care should have been taken to include all possible reliefs in one O.A. Splitting of the reliefs is not permissible under rules. The O.A. has no merit and accordingly dismissed.

No order as to costs.



Member-A.



Vice-Chairman.

Manish/-