

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1123 OF 2003

ALLAHABAD THIS THE 27th DAY OF JULY 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Shri Bhusan Shukla,
s/o Late Thakur Prasad Shukla.
aged about 68 years,
resident of Moh. 17, Balloch Tola,
Azamgarh Road, Jaunpur City.

.....Applicant

(By Advocate: Shri S. S. Sharma)

1. Union of India through the General Manager, North Western Railway Bikaner.
2. The Divisional Railway Manager, North Western Railway, D.R.M. Officer. Bikaner.

..... Respondents

(By Advocate: Shri A. K. Gaur)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A. applicant has sought quashing of the order dated 10.07.2003 (Pg.30) whereby his representation dated 08.04.2003 has been rejected. He has further sought a direction to the respondents to pay him a sum of Rs.1,63,904/- as per para 10 of his representation dated 08.04.2003 along with 18% interest per annum on the ~~sum of~~ ^{and 12} amount ~~of~~ Rs.1,00,000/- as compensation/damages.

2. The brief facts, as submitted by the applicant, are he had earlier filed O.A. No.543/1986 to pay him the amount as



claimed under para 4.7 to 4.12 of the original application along with 18% interest due to non promotion as TCI with effect from 01.01.1984 when his juniors were promoted, which was decided on 01.04.1992 by giving direction to the respondents to promote the applicant to upgraded scale of Rs.700-900/- as T.C.I. w.e.f. 01.01.1984 and place him above his juniors in the seniority list.

3. Respondents were also directed to settle the dues of pay and other monetary benefits to the applicant within a period of 3 months from the date of receipt of a copy of the order. Pursuant to the direction, applicant was promoted as T.C.I. Gr.I in the grade of Rs.700-900/- w.e.f. 01.01.1984 vide order dated 14.07.1992 (Pg.38) and his seniority was also fixed at Serial No.45 vide order dated 11.12.1992. Applicant retired on 30.06.1993 in the pay-scale of Rs.2000-3200/- (Pg.41) while his pay was fixed in the pay-scale of Rs.2375-3500/- and fixed at Rs.3200/- w.e.f. 01.06.1993. It is after his retirement that applicant was promoted to officiate as CTI in the scale of Rs.2375-3500/- w.e.f. 28.02.1989 by order dated 30.07.1993 by giving him proforma fixation (Pg.40).

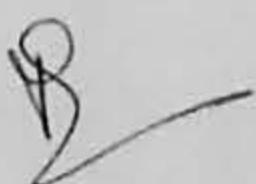
4. Grievance of the applicant in this case is that (1) his pensionary benefits ought to have been decided as per the pay fixed in the scale of Rs.2375-3500/- whereas his retrial benefits have been fixed in the pay-scale of Rs.2000-3200/- (2) since he was given promotion in 1993 w.e.f. 01.01.1984 he should be given arrears of pay accordingly as pay fixation done at Pg.42 as it could not have been done on proforma basis because his promotion was delayed due to the fault of



the respondents (3) an amount of Rs.10,000/- was withheld from his gratuity without any justification, therefore, the said amount should also be released. (4) Applicant has stated that he should be given Leave Encashment whereas that has been denied to him illegally.

5. Respondents have opposed this O.A. They have taken a preliminary objection that this O.A. is barred by resjudicata as applicant had filed earlier also O.A. No. 165/1996 seeking a direction to the respondents to pay amount with 18% interest but the said O.A. was dismissed on 07.01.2003. Therefore, he could not re-agitate the same by filing another original application (Pg.45). He further, submitted that it was made clear in the order dated 29.06.2003 itself that applicant would be given proforma fixation and if he was aggrieved he ought to have challenged the said order at that relevant time. Not having done so, it is not open to the applicant to seek arrears of amount in this O.A. Counsel for the respondents relied on the order dated 13.09.1997 passed by Hon'ble Supreme Court in the case of Union of India and Ors. Vs. P.O. Abraham & Ors. to state that no arrears can be paid to the applicant. He submitted that all that was due to the applicant pursuant to the directions given by this Tribunal in O.A. No.543/1986 was already granted. Therefore, there is no merit in the present O.A. The same may accordingly be dismissed.

6. As far as the amount of Rs.10,000/-, which was withheld from the gratuity of the applicant, he submitted that it is already stated in reply to applicant's representation that

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matter has been referred to Allahabad Division and as soon as reply is received, payments shall be made to the applicant. As far as his Leave Encashment is concerned, he stated that there is no leave available in the credit of the applicant. Therefore, no leave encashment is payable. He thus, prayed, that the O.A. may be dismissed. He also relied on the judgment given by Hon'ble Supreme Court in the case of COMMISSIONER OF INCOME TAX BOMBAY VS. T.P. KUMARAN reported in 1997 SCC (L&S) 135 to say that since applicant had not claimed arrears of amount etc. in his earlier O.A. his claim is barred by resjudicata.

7. I have heard both the counsel and perused the pleadings as well.

8(i) As far as the leave encashment is concerned, respondents have stated categorically that no leave was available in applicant's credit. Therefore, he is not entitled for any leave encashment. Counsel for the applicant suggested that leave account should be called in the court for perusal to see whether any leave was credited in his account or not. I am afraid such a practice cannot be adopted because it is not the function of court to hold roving enquiries, it is the duty of person who comes to the court to demonstrate how he is entitled to the relief claimed by him. Since applicant has not placed on record any document to show that there was any leave credited in his account. This relief has to be rejected out right.

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8(ii). As far as the contention of the applicant that an amount of Rs.10,000/- was withheld without any justification from his credit, it is seen respondents have stated in their reply while rejecting his representation that the matter has already been referred to the Allahabad Division and as soon as the reply is received from Allahabad Division, the payment shall be made to the applicant. It is seen that applicant had retired as back as on 30.06.1993. We are already in the year 2005 that means almost 12 years have passed-by. Respondents have not given any justification as to why the said amount was withheld. Even now all that they have stated is that the matter is referred to the Division, such an approach is not appreciated. After all 12 years is a long period, if there is any impediment in the way of releasing the said amount, it should have been communicated to the applicant as to why the said amount cannot be released but the very fact that even now in counter no justification has been given for withholding the said amount, it seems there is nothing against the applicant. In any case a direction is given to the respondents to atleast now decide the fate of Rs.10,000/- within a stipulated period. Therefore, respondents are directed to verify the facts and pay the amount of Rs.10,000/- to the applicant along-with interest @7% per annum from the date it became due, till it is actually paid, in case there is no valid justification. This shall be done within a period of 2 months from the date of receipt of a copy of this order. However, in case there is any valid ground for not releasing the said amount, reasoned order should be passed to that effect within the above stipulated period under intimation to the applicant.



8(iii). As far as claiming arrears on account of promotion as CTI in the grade of Rs.2375-3500/- w.e.f. 28.02.1989, it is seen that while granting him promotion as CTI in the grade of Rs.2375-3500/- w.e.f. 28.02.1989, it was specifically mentioned in the order dated 30.07.1993 that applicant would be given only proforma fixation of pay w.e.f. 28.02.1989 to the date of issue of promotion. This order was never challenged by the applicant at that stage. Even in the earlier O.A. when he filed O.A. No.165/1996, he sought a direction to the respondents to pay him the amount together with 18% interest as claimed in para 4.7 to 4.12 of the said original application. Meaning thereby that even in that O.A. he had not challenged the proforma fixation as was made clear in order dated 30.07.1993. Therefore, now he can not be allowed to raise this issue. According to doctrine of constructive resjudicata when any matter which might ought to have been made a ground of defence or attack in a formal proceedings but was not so made, then such a matter in the eye of law to avoid multiplicity of litigation and to bring about finality in it is deemed to have been given up by the person. It bars the trial of such an issue in subsequent proceedings between the same parties. Moreover, his earlier O.A. was dismissed on 07.01.2003 as applicant failed to show to the court how and in what manner the amount paid to him was short. The said O.A. was filed in the year 1996, therefore, if applicant was aggrieved he ought to have challenged the order dated 30.07.1993, as far as, it stated that applicant would be given proforma fixation w.e.f. 28.02.1989. Not having done so, it is not open to the



calculating his pensionary benefits. I am satisfied that since his pay fixation was done w.e.f. 28.02.1989 and he was already fixed at Rs.3125/- w.e.f. 01.06.1992, which was further fixed at Rs.3200/- w.e.f. 01.06.1993, his pensionary benefits should have been fixed by calculating the same as per last 10 months pay, which would have been due to him, had he been given promotion in time. Admittedly, applicant's pensionary benefits were fixed on the basis of his pay at Rs.3050/- as is evident from Pg.41 of the O.A. whereas it should have been on the basis of what he would have been entitled to for the last 10 months as per pay fixation done vide order dated 08.09.1993 (Pg.42 of the O.A.). Therefore, the applicant is entitled to get this relief. Accordingly, respondents are directed to recalculate the pensionary benefits of the applicant on the basis of last 10 months pay which ought to have been drawn by him after re-fixation in the pay-scale of RS.2375-3500/- as is shown on Pg.42 and pay him the difference of amount along with due and drawn statement within a period of 3 months from the date of receipt of a copy of this order.

9. In terms of directions given at Para- 8(ii) and 8(iv) above, the original application is disposed off. No order as to costs.

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25/1/05
Member (J)

Shukla/-