

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.108 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Surendra Pandey, S/O Late Ramdhari
Pandey at present residing at
Adarshanagar (Mandir Bari), P.O.
Barabahara, PS: Uttarpara, Dist.
Hooghly (W.B.)

... Applicant

VS

1. Union of India, service through
General Manager, S.E. Railway, GRC,
Calcutta-43;

2. General Manager, S.E. Railway,
GRC, Calcutta-43

3. Chief Personnel Officer, S.E.
Railway, Calcutta-43

... Respondents

For the Applicant : Mr. B.C. Sinha, counsel

For the Respondents: Mrs. B. Ray, counsel

Heard on 16.2.1999

: : Date of order: 16.2.1999

O R D E R

The question is whether the applicant is entitled to get interest on delayed payment of pay and allowances and other retiral benefits paid to him in pursuance of the direction given by this Tribunal in the judgment dated 5.1.1996 in OA 241/94. It is found that the applicant sought for certain reliefs in that application including the payment of all retirement benefits and after hearing the learned advocates of both the parties the Tribunal passed the following direction upon the respondents in the OA 241/94 :-

"a) About the period 1.1.91 to 4.7.91, the respondents shall consider the case of the applicant for grant of suitable remuneration as per rule.

b) For the period from 5.7.91 to 22.9.91 the applicant shall be paid remuneration as Rajbhasha Adhikari within a period of two months from the date of communication of this order.

c) The respondents shall pass appropriate order treating the period from 23.9.91 to 2.12.91 to be the period of waiting before the applicant joined at

Chakradharpur. The pay and allowances for this period shall be given accordingly and paid within a period of three months from the date of communication of this order."

After passing of the judgment 5.1.1996 in the OA the applicant also filed another contempt petition before this Tribunal bearing No. CPC 89/96 and that has been disposed of on 9.4.97 with the following observation :-

"we find the alleged contemnors have already taken action and they have also made payment to the applicant. Mr. Sinha, ld. counsel, submits that his client has also received the payment. In view of the above, we are of the opinion that there has been total compliance of the directions given by this Tribunal and hence, there is no ground to pursue the matter any further. The CP(C) is disposed of as action taken without passing any order as regards costs."

Now the applicant has come with the present application claiming interest for delayed payment of all the settlement dues as stated in para 5 of the application.

2. The respondents have resisted the claim stating that the application is not maintainable since the applicant applied for interest on delayed payment of settlement dues and that has been refused by this Tribunal and thereby the instant application is barred by the principles of res judicata in view of the judgment of the Hon'ble Apex Court, reported in 1996(2) SCSLJ 377 (Commissioner of Income Tax, Bombay vs. T.P. Kumaran). So, the application is liable to be dismissed.

3. ~~They have considered the submissions of the learned~~ advocates of both the parties. The learned advocate, Mr. Sinha on behalf of the applicant admits that the applicant applied for interest in the original application, but the Tribunal did not pass any order in respect of interest though the Tribunal granted other reliefs as sought for; thereby, he has right to claim interest on the delayed payment of settlement dues as per direction of this Tribunal. Mrs. Ray, on the other hand, relies on the judgment as referred to above and submits that the instant claim is barred by the principles of res judicata since the

applicant applied for interest for delayed payment of DCRG money etc., but the Tribunal did not consider the same as it was not found justified in the original application and the applicant did not file any appeal in respect of non-granting of interest as prayed for in the original application. Hence it is presumed that the prayer of interest has been refused. Thereby, the application is hopelessly barred by the principles of res judicata.

4. I have considered the submissions of the learned advocate of both the parties. It is found that as per provision of the CPC embodied in Order 2 Rule 2(1) "Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court." Sub-Clause (2) of Order II Rule 2 of the CPC further emphasizes "Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished." In the instant case I find that the applicant specifically claimed interest for delayed payment of retiral benefits but the Tribunal did not pass any order in respect of payment of interest on delayed payment as alleged by the applicant in the original application. Thereby it is found that the claim of interest was refused by this Tribunal. So, it can be said that the claim of interest by the applicant had not been granted by this Tribunal. Thereby it tantamounts to refusal. It is found that the present claim of the applicant is barred by constructive res judicata under Section 11, Explanation V of CPC which envisages that any relief claimed in the plaint which is not expressly granted by the decree, shall, for the purpose of this section be deemed to have been refused. So, here the interest was claimed but that refused. So, the applicant is