

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. NO. 588 of 1996

Dated 24th January 2003

Genesh Prasad Saha, son of Late Ranjit Prasad Saha, resident of at, PO and P.S. Naugachai, district Bhagalpur, retired Chief Booking Clerk, Naugachai Station, North Eastern Railway, Gorakhpur.

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Applicant

-versus-

1. Union of India, through the General Manager, N.E. Railway, Gorakhpur.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager (Personnel), Sonepur Division, Sonepur.
4. Divisional Personnel Officer, North Eastern Railway, Sonepur.
5. The Station Superintendent, Naugachai Railway Station, at PO and P.S. Naugachai, district Bhagalpur.

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Respondents

C O R A M : The Hon'ble Mrs. Shyama Dogra, Member (J)

Counsel for the applicant : None present

Counsel for the respondents. : Shri P.K.Verma

O R D E R

(Dictated in Court)

Shyama Dogra, Member (J):

1. After perusal of various orders passed in this case, it is found that various opportunities have been granted to the applicant to appear or be represented through his counsel but in spite of this, nobody has appeared even today on behalf of the applicant. Therefore, in view of the orders passed on 26.11.2002 and 10.12.2002, this O.A. is disposed of on the basis of material available on record. The main prayer as made out in the O.A. is that while deciding his earlier O.A. 365/94, vide Annexure-4, dated 21.5.1996, some of his prayer has not

been considered and decided by the Hon'ble Court, therefore, he has prayed for grant of over time allowance on the bills submitted by him for the post of C.S.Grade II for the period in between February 1989 to 31st January 1992 with part of the gratuity amount which has been illegally withheld by them along with interest.

2. The respondents have opposed this O.A. on the ground that the present application is barred by principle of res judicata as the applicant cannot come by way of fresh application for the same relief, he has earlier prayed for in his first O.A., as referred to hereinabove, and this is not the remedy for the applicant to seek the redressal of his grievance which he has already agitated in the previous O.A. Apart from this, it is submitted by the learned counsel for the respondents that the order passed in the said O.A. has been fully complied with and taking into consideration that he has been paid officiating allowance to C.S.Grade II for the period he worked in that capacity till he retired, the applicant is not entitled for over time allowance since over time allowance is not allowed. For this reason, the applicant is also not entitled for any gratuity on said amount. It is stated in para 5 of written statement that as almost all amount has been paid to the applicant in pursuance of the compliance of the said order (Annexure-4), the date and mode of payment ^{also} has been mentioned in the said para. However, the applicant has returned the same for the reasons not known to the respondents.

3. I have heard the learned counsel for the respondents and perused the relevant record of the case.

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After perusal of the entire record, it is found that the applicant also raised point of discrimination and reiterated in his rejoinder so far as payment of over time allowance is concerned. He has alleged that his successor one Shri A. Tirki has been extended this benefit of payment of over time allowance while the applicant has been denied the same. Even the respondents have not given any reply to this allegation in para 14 of the written statement.

4. It is an admitted fact that in the earlier O.A. the applicant has prayed for grant of over time allowance along with other prayers. However, no finding has been given in the said order, nor ~~he~~ ^{has} been given any liberty to agitate the matter separately, as has been observed ^{in said O.A.} that the prayer for payment of commercial debit (DRG) does not flow out of the remedy in the O.A., as the same does not form part of the main agitation in the O.A. Nothing has been mentioned about the payment of over time allowance.

5. Moreover, I find weight in the submissions of the learned counsel for the respondents that this O.A. is not maintainable on the ground of principle of res judicata. As per provisions contained in section 11 and order 2, Rule 2 of Civil Procedure Code, a person cannot agitate the issue already raised or disposed of in the earlier suit/lis until and unless such liberty is granted to the said person. In view of this, I am of the opinion that the present O.A. was not the remedy available to the applicant to agitate his prayer for grant of over time allowance, the prayer which he had already agitated in his earlier O.A. as he has given no liberty to agitate the matter by filing separate O.A. or as the case may be.

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6. So far as the point of discrimination is concerned, it is left open to the respondents to consider it on the application of the applicant, if he so desires, in judicial manner as no clear reply to this allegation of discrimination has come from the side of the respondents in the written statement.

7. In view of these observations and facts of the case, I am of the considered opinion that the present D.A. is not maintainable in the present form, being devoid of merit, therefore, the same is hereby rejected, being ~~banned~~^{hit} by principle of res judicata, with no order as to costs.

Shyama Dogra
(Shyama Dogra) 24.1.03
Member (J)

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