

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 675 /1996

Date of Decision: 6.3.1997

J.D.Vyas.

Petitioner/s

Smt. K.Nagarkatti

Advocate for the  
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri R.C.Kotiankar.

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri M.R.Kolhatkar, Member(A)-

Hon'ble Shri

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

**MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.675/ 1996.

Thursday, this the 6th day of March, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

J.D.Vyas,  
Vishwas Building,  
3rd Floor,  
126/133, L.T.Road,  
Borivali (West),  
Bombay - 400 092. ... Applicant.

(By Advocate Smt. K.Nagarkatti)

v/s.

1. Union of India  
(Through : Secretary to  
Government of India)  
Department of Telecommunications,  
Sanchar Bhawan,  
New Delhi.
2. Chief General Manager,  
Department of Telecommunications,  
Maharashtra Circle,  
Bombay - 400 001.
3. Chief General Manager,  
Mahanagar Telephone Nigam Ltd.,  
Telephone House, V.S.Marg,  
Prabhadevi, Bombay - 400 028.
4. General Manager (South)  
MTN L,  
Telephone Bhawan, Colaba,  
Bombay - 400 005.
5. Accounts Officer (Works),  
MTNL,  
Telephone Bhawan, Colaba,  
Bombay - 400 005.

(By Advocate Shri R.C.Kotiankar).

## ORDER (ORAL)

¶ Per Shri M.R. Kolhatkar, Member(A)

Heard Smt. K.Nagarkatti for the applicant and  
Shri R.C. Kotiankar for the Respondents.

2. In this O.A. the applicant is claiming the relief of interest on delayed payment of CDS amount and Leave encashment dues. This case has a long history

of litigation. In terms of this Tribunal's orders in O.A. No.299/91 dated 6.9.1992 this Tribunal quashed the order of the Department dt. 5.3.1991 dismissing the applicant from service. The Tribunal observed that the applicant ~~would~~ <sup>obviously</sup> be entitled for pensionary benefits as on attaining the age of superannuation the applicant would be deemed to have retired from service. His deemed date of retirement is 1.7.1989. In O.A. No.217/94 the applicant had claimed several reliefs and as these were some what dis-joined the applicant was directed to amend the O.A. by this Tribunal vide its order dt. 2.9.1994 and this amended O.A. was finally heard on 21.10.1994 and the respondents were directed to make payment of interest on delayed payment of gratuity and arrears of pension within three months from the date of receipt of that order. Accordingly, the payment of interest was made on delayed payment of gratuity and arrears of pension. But so far as the interest on remaining items viz. C.D.S. and encashment of leave is concerned the respondents have communicated to the applicant by their letter dt. 21.3.1995 that the CAT has not passed any specific order on payment of interest. The department has taken the stand that the CAT has only passed orders on the two delayed payments viz. arrears of pension and gratuity and therefore the question of payment of interest on the amounts does not arise.

2. The contention of the applicant is that he is entitled to receive CDS Fund, as well as, leave encashment dues on the date of retirement, but the payment of these dues was actually made on 20.10.1994 and 16.8.1994 respectively and therefore the department

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is bound to pay interest on delayed payment of pensionary benefits, whereas respondents contend that C.D.S. and Leave encashment do not form part of the pensionary benefits.

3. The applicant has also relied on the Full Bench decision of the CAT Principal Bench, New Delhi in the case of B.K.Anand V/s. Union of India through General Manager, Northern Railway reported at Kalra's Full Bench Judgments 1991-93 page 140. In para 7 of the Judgment the Full Bench had observed that as there is a long delay the interest should be paid on the leave encashment within a reasonable time that is within three months from the date of filing of the settlement papers by the applicant.

4. The learned counsel for the respondents has opposed the O.A. According to him both the reliefs are hit by principles analogous to res judicata. In this connection he relies on CAT Judgment in Radha Kant Jha V/s. Union of India and Another reported at 1989(3) (CAT) SLJ 367 wherein at para 8-B the Tribunal has observed as below :

"In our opinion, if a claim could have been raised by the applicant before the Calcutta High Court and the Supreme Court, where he had challenged the alleged wrongful termination of his services, he will not be entitled to file an application in the Tribunal. In such a case, we think that the rule of constructive res judicata would apply. We are not impressed by the contention of the applicant that he could come up with such a claim only after the Supreme Court had adjudged the termination to be wrongful. In Shri Devi Lal Modi V/s. Sales Tax Officer, Ratlam the Supreme Court declared the law as follows:-

"...This rule postulates that if a plea could have been taken a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding

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after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred."

Secondly, the leave encashment was also withheld in terms of Rule 39(3) of CCS(Leave) Rules which authorises the Competent Authority to withhold whole or part of leave encashment dues in the case of a government servant who retires from service while disciplinary or criminal proceedings are pending against him.

Thirdly, it is contended that there is an over payment of Rs.8,467/- to the applicant in the commutation of pension plus interest from DCRG and the applicant is required to refund the same and therefore the applicant is even otherwise not entitled to the relief as claimed.

5. The counsel for the applicant contends that the principles of res judicata are not applicable to the facts of this case. So far as the over payment of Rs.8,467/- is concerned the same is a subject matter of a separate O.A. viz. O.A. 89/97 and the same cannot be made a ground for denial of the relief due to the applicant.

6. The principles of res judicata in my view would certainly apply in relation to the Judgment dt. 21.10.1994 in which the applicant had claimed the relief of interest. In fact, at that time itself the respondents had opposed the claim on the principles analogous to res judicata, but this Tribunal had repelled that objection on the ground that in the O.A. the applicant had specifically prayed for damages and again in the amended O.A. the applicant had claimed for interest on delayed payment and therefore the arguments based on principles analogous to res judicata were not accepted but on the same logic I am required to consider whether the claims for interest put forth in this O.A. were considered by the Tribunal in the order dt. 21.10.1994. In regard to CDS it is stated

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in the Judgment that for payment of this amount action is under process as per the reply of the respondents and the applicant does not wish to make a grievance on this count. In my view, therefore so far as the question of payment of interest on CDS is concerned, even assuming that argument of the counsel for the applicant that interest normally payable on the CDS is quite distinct from the interest claimed in the present O.A., I am required to hold that the applicant had given up the claim to interest on payment of CDS at the time of hearing of that O.A. The Judgment in O.A. 474/93 dt. 21.10.1994 has become final and therefore the applicant cannot now reagitate the same through this separate O.A. Regarding the leave encashment, it is very difficult to accept the contention of the respondents that Rule 39(3) stands in the way for grant of interest to the applicant on account of delay. So far as the disciplinary proceedings against the applicant are concerned the same stood concluded with order of the Tribunal in O.A. 299/91 on 6.4.1992. However, at the time of passing the order the amount of leave encashment had admittedly been paid and the Judgment was pronounced on 21.10.1994. Again no grievance was made before the Tribunal regarding non-payment of interest on the amount of leave encashment. Therefore, that claim also has to be treated as not having been pressed. The Judgment specifically states that "What he is praying for to day before the disposal of the case, is interest on delayed payments on difference in the arrears of pension viz. provisional pension of Rs.250/- and the final pension of Rs.912/- and gratuity". In my view, therefore, both the claims are squarely covered by principles analogous to res judicata as his claims were before the Tribunal and the claims were either given up by the applicant or the Tribunal did not concede the same.

In the circumstances, I am not inclined to grant any relief in this O.A. The O.A. is therefore dismissed with no order as to costs.

*M.R.Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A).

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