

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 OCT 1988

APPLICATION NO.

1186

/88(F)

W.P. NO.

Applicant(s)

Shri I.R. Prakash
To

v/s

Respondent(s)
The Director General, Telecommunications,
New Delhi & another

1. Shri I.R. Prakash
13, Vijayarangam Lay-out
Basavanagudi
Bangalore - 560 004
2. Shri Ranganath S. Joshi
Advocate
36, 'Vagdevi'
Shankarpuram
Bangalore - 560 004
3. The Director General
Telecommunications
No. 20, Sanchar Bhawan
Ashoka Road
New Delhi - 110 001

4. The Superintending Engineer
Postal Civil Circle
No. 176, I Main Road
Old R.M.S. Building, I Main Road
Seshadripuram
Bangalore - 560 020
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~RECORDED~~ ~~RECORDED~~ ORDER
passed by this Tribunal in the above said application(s) on 13-10-88.

*Issued
K. N. Rajan
25-10-88*

Encl : As above

O/C

[Signature]
SECTION OFFICER
RECORDED
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 13TH DAY OF OCTOBER, 1988

PRESENT:

Hon'ble Sri L.H.A.Rego,

.. Member(A)

APPLICATION NUMBER 1186 OF 1988

I.R.Prakash,
S/o late Sri I.S.Raghavachar,
Aged about 45 years,
Residing at No.13,
Vijayarangam Lay-out,
Basavanagudi, Bangalore-4.

.. Applicant.

(By Sri Ranganath S.Jois, Advocate)

v.

1. The Director General,
Tele Communication,
No.20, Samachar Bhavan,
Ashoka Road, NEW DELHI 110 001.
2. The Superintending Engineer,
Postal Civil Circle,
No.176, I Main Road,
Old R.M.S. Building, I Main Road,
Seshadripuram, Bangalore-560 -20.

.. Respondents.

(By Sri M.Vasudeva Rao, ACGSC)

This application having come up for hearing, Tribunal made the following:

ORDER

In this application, filed under Section 19 of the Administrative Tribunals Act,1985, the applicant prays for a direction to the respondents, to pay admissible interest to him, on the delayed payment of Death-Cum-Retirement Gratuity ('DCRG'), according to Rule 68 of the Central Civil Services (Pension) Rules,1972 ('1972 Rules'), as also on the delayed payment of arrears of Pension, Commuted Pension and Leave Encashment, according to the decision of the Supreme Court and for such other direction, deemed appropriate, in the facts and circumstances of the case.

2. The following are the essential facts: The applicant who was working as Assistant Engineer (Civil), in the Tele Communication Department, Bangalore, was on deputation as Surveyor of Works (Civil), in the All India Radio (Civil Construction Wing), wherefrom he retired from service voluntarily, with effect from 31-7-1985.



3. The applicant alleges, that even though he was permitted to retire voluntarily, his retiral benefits such as Pension, DCRG, & Pro-
fident Fund, were not paid to him, along with the interest thereon. He was therefore constrained, to file Application No. 418 of 1987, before this Tribunal, on which the following order was passed on 18-9-1987:

"After hearing both sides we are of the view that such a long delay in settling the terminal benefits of a retired employees is deplorable, especially when statements are being made on behalf of Government from time to time that pension and other terminal benefits would be settled on the date of retirement itself. Sri Vasudeva Rao prays for 2 months' time to enable the respondents to settle the terminal benefits of the applicant. Sri Ranganatha jois has no objection to this extension of time being given. We therefore, direct the respondents to settle all the terminal claims of the applicant within 2 months from to-day. The applicant has also prayed that he should be paid interest on delayed payment of his provident fund balance. The provident fund balance in his account was paid to him with interest upto 28-2-1986, but the actual payment was made only on 11-3-1987. We are unable to understand why, when the actual payment was made on 11-3-1987 interest on the balance should have been paid only upto 28-2-1986. We direct the respondents to pay interest from 1-3-1986 to 11-3-1987.

The application is disposed of on the above terms. Parties to bear their own costs."

4. The applicant further complains, that inspite of the above Order of this Tribunal, the respondents denied him the benefit of interest payable, on belated payment of Pension, DCRG and Leave Encashment. He claims, that this interest is payable to him, according to the provisions of Rule 68 of 1972 Rules. He states, that the respondents are wholly responsible for the inordinate delay, of nearly three years, in not settling this payment, without any reasons therefor.

5. He had thereon, filed Contempt Petition(Civil) No.57 of 1988 before this Tribunal, which was disposed of on 5-8-1988, on the following terms:

"In their reply filed, the respondents have asserted that they had complied with this order in letter and spirit. In the statement annexed to the reply, the respondents have furnished particulars of payment made to the petitioner which reveal that the order of this Tribunal had been complied with by them.

6. After the arguments in the case were concluded Shri S.R.Jois, learned counsel for the petitioner prays for permission to withdraw this petition. We cannot do the same in contempt of court proceedings. We, therefore, proceed to decide the case on merits.



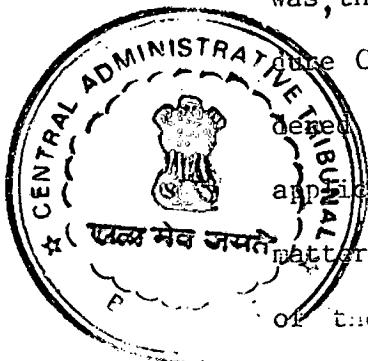
4. We are satisfied that the respondents had complied with the order of this Tribunal in letter and spirit and there is no more direction which is still to be complied by them. On this view, these contempt of court proceedings are liable to be dropped. We, therefore, drop these contempt proceedings. But, in the circumstances of the case we direct the parties to bear their own costs."

6. The applicant however still insists, that in Application No.418 of 1987, there was no direction by this Tribunal, for payment of interest on belated settlement of arrears of Pension, Commuted Pension and DCRG, on account of which, he has come before the Tribunal with the present application.

7. Sri Ranganath S.Jois, learned counsel for the applicant, built the edifice of his case, on the following brick and mortar. He stated, that his client had voluntarily retired from service, with effect from 31-7-1985 but his Pension and DCRG were paid far too belatedly, in November, 1987 i.e., after nearly two years. This Tribunal, he said, had pointedly observed in its Order dated 18-9-1987, that this inordinate delay was deplorable. The respondents had given no reasons he submitted, for this abnormal delay, for which his client should not be made to suffer vicarious punishment. Rule 68 of the 1972 Rules, he urged, explicitly provided for interest, on belated payment of DCRG, and therefore, denial of the same to his client, would be clearly arbitrary and illegal.

8. The respondents have filed their reply refuting the claim of the applicant.

9. The spearhead of Sri M.Vasudeva Rao, learned counsel for the respondents, in demolishing the superstructure built by Sri Jois, was, that the matter was, according to Section 11 of the Civil Procedure Code, barred by res judicata, by the categorical decision rendered by this Tribunal on 18-9-1987, on the selfsame prayer of the applicant in Application No.418 of 1987, referred to earlier. The matter was fully concluded, he asserted, by that explicit decision of the Tribunal, which the respondents had already complied with, faithfully, both in letter and spirit. He further emphasised, that convinced of the same, this Tribunal had dropped the contempt



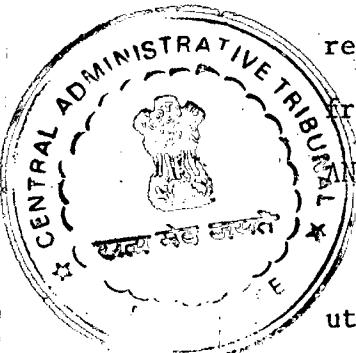
proceedings, in the aforementioned Contempt Petition (Civil) No.57 of 1988. On this ground alone, he urged, the present application deserved to be summarily rejected.

10. Sri Jois, however, would not relent. He argued trenchantly, that in the aforesaid Application No.418 of 1987, the Tribunal had failed to take cognisance of the express prayer at para 7(1) thereof, relating to interest on belated payment of Pension and DCRG and ~~to~~ issued a proper and explicit direction thereon, despite animadversion by it, as regards deplorable long delay, in settling the retiral benefits of the applicant. The respondents had filed no reply in the application, he vehemently contended and there was no discussion whatsoever on merits, but the matter was abruptly concluded, on an assurance given by counsel for the respondents, to settle the retiral benefits of the applicant, within a specific time-frame. The bar of res judicata, could not therefore operate against his client, in this background, he forcefully contended, especially, when the matter (namely the prayer at para 7(i) ibid) was either directly or substantially not in issue, of ^{which} ~~as~~ the Order of the Tribunal itself, was indicative and there was no express denial of the said prayer, either orally or in the order of the Tribunal.

11. In order to buttress his contention, he relied strongly on the ruling of the Supreme Court, in SHEODHAN SINGH v. DARYAO KUNWAR (AIR 1966 SC 1332), that in order that a matter may be said to have been heard and finally decided, the decision must be on merits.

12. He also called in aid, the dicta of the Supreme Court, in regard to award of interest, on the amount of retiral benefits, due from the date of superannuation, in HARENDRANATH v. STATE OF BIHAR AND OTHERS [1987 (SUPP.) SCC 56].

13. I have examined the rival pleadings of both sides with the utmost consideration and have also gone through carefully, the relevant material placed before me. The sheetanchor of the respondents is the bar of res judicata, held against the applicant. Let me examine



examine minutely, as to what the Civil Procedure Code states in this respect. Explanation V to Section 11 ibid, on res judicata in my view, ~~which~~ places the lid tellingly, on the controversy raised by Sri Jois. It reads thus:

"Explanation V - Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused."
(emphasis added)

14: Let me now advert to the operative part of the order of this Tribunal dated 18-9-1987, in Application No.418 of 1987 (vide para 3 above). It has been clearly stated therein, that the decision was taken after hearing both sides (emphasis added) and not unilaterally, on the mere assurance given by the counsel, for the respondents in that application, to settle the terminal benefits, as was essayed to be made out, by Sri Jois in his pleadings (vide para 10 above). Besides, the Tribunal had not referred to Provident Fund alone, as the terminal benefit but to Pension and other terminal benefits as well, while making the order in that application, but in its wisdom it deemed it proper, to direct payment of interest only in regard to belated settlement of the amount, to the credit of the applicant, in his Provident Fund. In this context, it would be clearly disingenuous for Sri Jois to contend, that the prayer of his client in para 7(i) in Application No.418 of 1987, was either directly or substantially not in issue. Neither Sheodhan Singh's nor Harendranath's case, relied upon by the applicant (vide: paras 11 and 12 above), ~~are~~ ^{is} of any avail to him, in view of the above.

15. Besides, the order was pronounced in Open Court on 18-9-1987, in the aforesaid application, when the counsel for the applicant did not seem to have raised the above contention, but, accepted the decision of the Tribunal, without demur. The contention now raised does not, therefore, ring true and seems to be an after-thought.

16. In the light of the foregoing, I cannot but hold, that the present application is clearly hit by the bar of res judicata and





consequently, the applicant should fail on this premise itself. The application is thus dismissed on this ground, with no order, however, as to costs.

Sd/-

MEMBER (A)

15.12.1988

TRUE COPY

M. S. Iyer 25/12/88

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 OCT 1988

To

1. Shri Sanjeev Malhotra
All India Law Journal
Hakikat Nagar, Mal Road
New Delhi - 110 009
2. Administrative Tribunal Reporter
Post Box No. 1518
Delhi - 110 006
3. The Editor
Administrative Tribunal Cases
C/o Eastern Book Co.
34, Lal Bagh
Lucknow - 226 001
4. The Editor
Administrative Tribunal Law Times
5335, Jawahar Nagar
(Kolhapur Road)
Delhi - 110 007
5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of ~~Honorable~~ ~~Honorable~~

and Hon'ble Mr. L.H.A. Rego Member (A) with a
request for publication of the order in the journals.

Order dated 13-10-88 passed in A.Nos 1186/88(F).

Yours faithfully,

AP Jithy
for (8X8 XENKATA REDDY)
DEPUTY REGISTRAR (C)

8c.

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, A.J.C. Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), 1st Floor, Near Konkan Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandankulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 001 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)

AP Singh
(EXXXXXXXENXXXXXX)
for DEPUTY REGISTRAR (J)

Attached
AP Singh
25.10.98

0c.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 13TH DAY OF OCTOBER, 1988

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-2-

3. The applicant alleges, that even though he was permitted to retire voluntarily, his retiral benefits such as Pension, DCRG, & Provident Fund, were not paid to him, along with the interest thereon. He was therefore constrained, to file Application No.418 of 1987, before this Tribunal, on which the following order was passed on 18-9-1987:

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4. The applicant further complains, that inspite of the above Order of this Tribunal, the respondents denied him the benefit of interest payable, on belated payment of Pension, DCRG and Leave Encashment. He claims, that this interest is payable to him, according to the provisions of Rule 68 of 1972 Rules. He states, that the respondents are wholly responsible for the inordinate delay, of nearly three years, in not settling this payment, without any reasons therefor.

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3. After the arguments in the case were concluded Shri S.R.Jois, learned counsel for the petitioner prays for permission to withdraw this petition. We cannot do the same in contempt of court proceedings. We, therefore, proceed to decide the case on merits.

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-4-

proceedings, in the aforementioned Contempt Petition (Civil) No.57 of 1988. On this ground alone, he urged, the present application deserved to be summarily rejected.

10. Sri Jois, however, would not relent. He argued trenchantly, that in the aforesaid Application No.418 of 1987, the Tribunal had failed to take cognisance of the express prayer at para 7(1) thereof, relating to interest on belated payment of Pension and DCRG and ~~today~~ issued a proper and explicit direction thereon, despite animadversion by it, as regards deplorable long delay, in settling the retiral benefits of the applicant. The respondents had filed no reply in the application, he vehemently contended and there was no discussion whatsoever on merits, but the matter was abruptly concluded, on an assurance given by counsel for the respondents, to settle the retiral benefits of the applicant, within a specific time-frame. The bar of res judicata, could not therefore operate against his client, in this background, he forcefully contended, especially, when the matter (namely the prayer at para 7(i) ibid) was either directly or substantially not in issue, of ~~which~~ ^{which} the Order of the Tribunal itself, was indicative and there was no express denial of the said prayer, either orally or in the order of the Tribunal.

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examine minutely, as to what the Civil Procedure Code states in this respect. Explanation V to Section 11 ibid, on res judicata in my view, ~~now~~ ^{as} places the lid tellingly, on the controversy raised by Sri Jois. It reads thus:

"Explanation V - Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused."

(emphasis added)

14: Let me now advert to the operative part of the order of this Tribunal dated 18-9-1987, in Application No.418 of 1987 (vide para 3 above). It has been clearly stated therein, that the decision was taken after hearing both sides (emphasis added) and not unilaterally, on the mere assurance given by the counsel, for the respondents in that application, to settle the terminal benefits, as was essayed to be made out, by Sri Jois in his pleadings (vide para 10 above). Besides, the Tribunal had not referred to Provident Fund alone, as the terminal benefit but to Pension and other terminal benefits as well, while making the order in that application, but in its wisdom it deemed it proper, to direct payment of interest only in regard to belated settlement of the amount, to the credit of the applicant, in his Provident Fund. In this context, it would be clearly disingenuous for Sri Jois to contend, that the prayer of his client in para 7(i) in Application No.418 of 1987, was either directly or substantially not in issue. Neither Sheodhan Singh's nor Harendranath's case, relied upon by the applicant (vide: paras 11 and 12 above), ~~are~~ ^{is} of any avail to him, in view of the above.

15. Besides, the order was pronounced in Open Court on 18-9-1987, in the aforesaid application, when the counsel for the applicant did not seem to have raised the above contention, but, accepted the decision of the Tribunal, without demur. The contention now raised does not, therefore, ring true and seems to be an after-thought.

16. In the light of the foregoing, I cannot but hold, that the present application is clearly hit by the bar of res judicata and

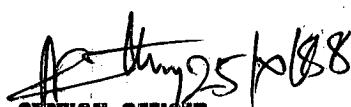
consequently, the applicant should fail on this premise itself. The application is thus dismissed on this ground, with no order, however, as to costs.

Sd/-

MEMBER (A)

13.12.1988

TRUE COPY



SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE 25TH DAY OF NOVEMBER, 1988

Before

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

REVIEW APPLICATION NO.109 OF 1988

Shri I.R.Prakash
S/o Late I.S.Raghavachar
45 years,
No.13, Vijayarangam Layout,
Basavanagudi, Bangalore-4. .. Applicant

(By Shri Ranganath S.Jois, Adv. for applicant)

-vs.-

1. The Director General
Telecommunication,
No.20 Samachar Bhavan,
Ashoka Road, New Delhi-1
2. The Superintending Engineer,
Postal Civil Circle,
No.176, I Main Road,
Old R.M.S. Building, I Main
Road, Seshadripuram, Bangalore-20.
.. Respondents

This Review Application coming on for
admission this day, Hon'ble Mr.L.H.A.REGO,
MEMBER(A), made the following:

✓

Order

Soldier
Copy

O_r_d_e_r

This is a striking case, where the applicant has been pertinaciously harping on the same grievance, before this Tribunal four times over, leading thereby to an irresistible impression that he is perhaps carried away by the dictum, dum spiro spero - while there is life there is hope - and by the motto of Robert Bruce, "Try try again", which ~~is~~ upto a certain point is understandable, but not thereafter, as otherwise, it would only imply, that the applicant is taking undue advantage of the process of the Court, as has happened in this case.

2. The following chequered course of this case is revealing in this respect. The review applicant working as Assistant Engineer(Civil) in the Telecom Department, which was his parent Department, was on deputation as Surveyor of Works(Civil) in the All India Radio (Civil Construction Wing), wherefrom, he retired voluntarily with effect from 31-7-1985.

3. As his terminal dues, inclusive of Provident Fund amount to his credit, were not paid to him, in time, by the respondents, he filed Application No. 418 of 1987 before this Tribunal with a prayer, that

As

they

they may be directed, to make payment thereof to him, expeditiously, along with interest, for delay. A Division Bench of this Tribunal heard the matter on 18-9-1987 and directed the respondents, to settle all the terminal benefits of the applicant within the period specified, with an explicit direction, for payment of interest upto 28-2-1986, only in regard to the Provident Fund amount, to the credit of the applicant.

4. The applicant filed a Contempt Petition(Civil) No.57/88 before this Tribunal, alleging that the order of this Tribunal in Application No.418/87, was not faithfully complied with, by the respondents. A Division Bench of this Tribunal disposed of that contempt petition on 5-8-1988, dropping the contempt proceedings, stating, that the order of this Tribunal, in Application No.418/87 was complied by the respondents, both in letter as well as in spirit.

5. Yet aggrieved, the applicant filed another application bearing No.1186 of 1988, praying for a direction to the respondents, to pay admissible interest to him, on belated payment of DCRG, arrears of pension, commuted pension and leave encashment, on the ground, that there was no direction by this Tribunal, in Application No.418 of 1987, thereon. This application was heard by me and dismissed on 13-10-1988 as being hit by the bar of res judicata. Aggrieved with

SL

this

this decision, the applicant has approached this Tribunal through his present Review Application, under Sec.22(3)(f) of the Administrative Tribunals Act, 1985.

6. The main contention of Sri Ranganath S. Jois, learned Counsel appearing for the review-applicant is, that this Tribunal erred in observing, that the terminal benefits were directed to be granted without admissible interest and that it failed to take into account, the patent difference between the relief sought for in Applications Nos. 418/87 and 1186/88, and therefore the bar of res judicata does not apply to his client.

7. In fact, the very tenor of the Review Application reveals that the applicant desires that the evidence be reappraised and the case re-examined by this Tribunal on merits, by way of appeal. Such a course is clearly impermissible, as this Tribunal cannot substitute itself as a forum of appeal against its own judgment. It needs no emphasis, that the applicant cannot ~~be~~ take recourse, to the remedy of review of the order of the Tribunal, in the original application, as a matter of routine, merely with an object of correcting an allegedly erroneous view taken by the Tribunal therein, but only on the limited ground of rectifying a patent error of fact/law on the face of the record. This however, is not the case in the

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Review

Review Application before me, as all material facts and issues in the original application, were duly noticed and examined by me, before dismissing that application, by my Order dated 14-10-1988.

8. In the premises aforesaid, I find no merit in this Review Application and therefore dismiss the same, at the admission stage itself.

Sd/-

(L.H.A.REGO) 25-XI-88
MEMBER(A).

TRUE COPY

R.H.A. 2/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE