

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, 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:

"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 in spite 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.

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.



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 applicant⁴ 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~~ ^{by} issue 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 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 sheet anchor of the respondents is the bar of res judicata, held against the applicant. Let me examine



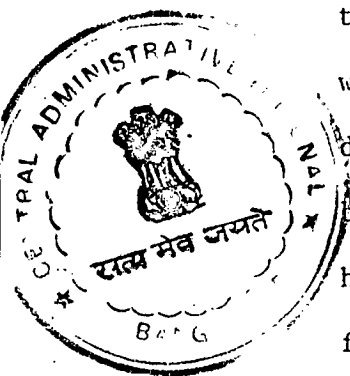
examine minutely, as to what the Civil Procedure Code states in this respect. Explanation V to Section 11 ibid, on res judicata in my view, ~~clear~~ places the lid tellingly, on the controversy raised by Sri Jois. It reads thus:

"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) 13.12.88

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[Signature] 28/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE