

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 17 NOV 1993

APPLICATION NO(s) 636 of 1993.

APPLICANTS: N. Mohan Das

v/s. RESPONDENTS: Secretary, Ministry of
Science & Technology, NDelhi & Others.

TO.

1. Sri. K. K. Vasanth, Advocate, No. 156/1, First Floor,
Rastriya Vidyalaya Road, Near Minerva Circle,
Bangalore-560 004.
2. Administrative-cum-Accounts Officer,
Electronics Tests and Development Centre,
KEONICS Bhavan, Peenya Industrial Area,
Bangalore-560 058.
3. Sri. M. Vesudeva Rao, Addl. Central Govt. Stng. Counsel,
High Court Building, Bangalore-560 001.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 09-11-1993.

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Issued

for

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17/11/93

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CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE BENCH

O.A. NO.636/1993

TUESDAY THIS THE NINETH DAY OF NOVEMBER 1993

Shri V. Ramakrishnan .. Member [A]

Shri A.N. Vujjanaradhya .. Member [J]

N. Mohan Das,
Aged about 30 years,
S/o N. Narayanappa,
Residing at No.P-28,
CCI Buildings, MES Road,
Jalahalli, Bangalore-560 013.

... Applicant

By Advocate Shri K.K. Vasanth

Vs.

1. Union of India
Ministry of Science & Technology,
Department of Electronics,
No.3, Racecourse Road,
New Delhi-110 011 represented by its Secretary.
2. Administrative cum Accounts Officer,
Electronics Tests and Development
Centre, KEONICS Bhavan,
Peenya Industrial Area,
Bangalore-560 058.
3. The Director,
Electronics Tests & Development
Centre, KEONICS BHAVAN,
Peenya Industrial Area,
Bangalore-560 058.

... Respondents

By Advocate Shri M. Vasudeva Rao,
Additional Central Govt. Standing Counsel

ORDER

Shri A.N. Vujjanaradhya, Member [J]

1. The applicant who is aggrieved by the order dated 21.7.1992 and 18.9.1992 passed by 2nd respondent withholding salary for the months of July to December 1992 has filed this application under Section 19 of the Administrative Tribunals Act ["the Act" for short] seeking the following reliefs:



"[1] to quash the memo dated 21.7.1992 bearing No.13006/NM issued by the respondent No.2 vide Annexure A3 and the memo dated 18.9.92 bearing No.13006/NM/1806 issued by the 2nd respondent vide Annexure A-4 so far as it relates to levy of penal interest;

[11] to direct the respondents to pay fine of Rs.1000 as they contravened Section 5 of the Payment of Wages Act and direct them to pay penalty for the offences committed under Section 20[1] and [6] of the Payment of Wages Act 1936 and direct the respondents not to levy any penal interest as the respondent wilfully and negligently withheld the salary payable to the applicant for the month of July and August 92 and deducted the entire salary of the months of September to December '92 contravening all the provisions of Payment of Wages Act, 1936. As the entire loan has already been recovered the respondent cannot levy any penal interest which amounts to double jeopardy."

The applicant had earlier made O.A. No.17/93 which was disposed of on 10.2.1993, a copy of the order being at Annexure A-2, which was disposed of with the following direction:

"2. We think it appropriate to dispose of this application by directing the applicant to make an application for a fresh loan explaining the circumstances under which the earlier loan granted has stood recovered, despite the man having purchased the scooter. With this observation, this application stands disposed of. No costs."

In O.A. No.17/93 the applicant had sought the reliefs as below:

"A. To quash the orders passed by respondent 1, Annexures A-1 and A-3 without any sanction of law which amounts to gross irregularity or negligence in discharge of official duties with dishonest motives.

B. Immediate release of all salaries to reduce debt burden created to applicant because of illegal actions which amount to misuse and/or abuse of Authority.

C. Levy damages of Rs.5,000 on the respondents for willfully violating the existing rules in vindictive attitude, without considering the impact of the actions on the family of the applicant. The respondents have wilfully and unlaw-

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fully disobeyed the rules with intent to cause injury to the applicant." (only recent portion is quoted) *h*

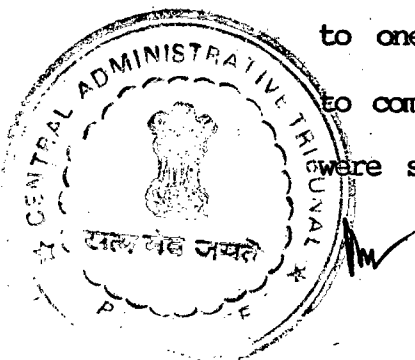
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2. The applicant in his application has narrated in detail the circumstances under which the recoveries are being effected and condition of sanction of vehicle advance. It is not necessary to refer to the averments in the application in detail.

3. The respondents among other grounds oppose the application contending that the same is barred by principle of res judicata, that the provisions of Payment of Wages Act ["PW Act" for short] are not applicable to the ~~facts of the~~ present case and that, therefore, the application is not maintainable.

4. We have heard Shri K.K. Vasanth, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents.

5. The order passed in OA No.17/93 quoted above, directed the applicant to make ^{an application} ~~a representation~~ for fresh loan. But the learned counsel contended that such ^{application} ~~representation~~ was made subsequent to the filing of this application. It is not explained as to why fresh loan application was not made immediately after the disposal of OA No.17/93. Be that as it may, the present application, as rightly contended by the learned counsel for the respondents, is barred by principle of res judicata. We have quoted the reliefs sought by the applicant not only in the present application but also in the earlier application which are similar to one another and, therefore, the applicant is not entitled to come up with a fresh application for the same reliefs which were sought in the earlier application. The principle of res



judicata operates against the applicant and, therefore, the present application is barred by the said principle.

6. Very strangely the learned counsel for the applicant advanced an argument that because Section 11 of Civil Procedure Code is not made applicable under Section 22 of the Act, the principle of res judicata is not at all applicable to the Tribunal and, therefore, the said principle cannot operate in this Tribunal. This contention is wholly untenable and devoid of any reason. Even though Section 11 of the Civil Procedure Code is not applicable the principle of res judicata which is the principle of law is applicable to all proceedings of legal nature and, therefore, we are unable to agree with the contention of the learned counsel. Consequently the application has to fail on the ground of principle of res judicata.

7. Another strange contention advanced by the learned counsel is that because the provisions of PW Act were not urged as a ground in the earlier application and those provisions are now sought to be urged the application is not barred by res judicata, is also without any merit and such a contention is not at all open to the applicant. It is needless to point out that the applicant was entitled to urge all such grounds which he was legally entitled to take and if he has failed to take up any such contention it is not open to come forward with a subsequent application bringing out such contentions. Thus we see no merit in this contention too.

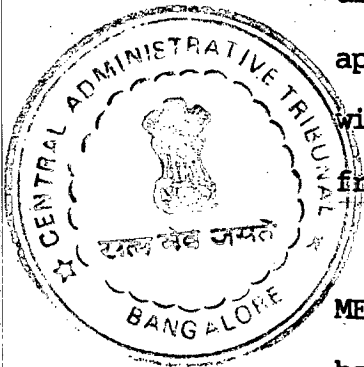
8. The provisions of PW Act are not at all applicable to the present case as rightly contended by the learned counsel for the respondents. Clauses 5 and 6 of Section 1 of the said Act

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specifically mention that the provisions of the Act are not applicable to employees of the Central Government and in this view of the matter, the applicant cannot be permitted to invoke even the provisions of PW Act.

9. Even though the application will have to be dismissed as not maintainable not only on the ground of principle of res judicata but also on the ground that provisions of PW Act are not applicable to the applicant, we have to view the case of the applicant with some sympathy because of the hardship that is being suffered by him by withholding his salary for several months and take lenient view in his case even though he was adamant in not producing R.C. and I.C. to show that he has purchased the vehicle in question and has utilised the advance paid to him. Thus we deem it proper to direct the respondents to consider the case of the applicant sympathetically and dispose of the ~~application~~ ^{if it has been made} ~~representation alleged to have been made by him on its merits.~~ ^{in its merits.}

10. In the result the application fails and the same is hereby dismissed but without any order as to costs. However, we hereby direct the respondents to consider the ~~representation~~ ^{application} of the applicant ^{to fresh loan} sympathetically and dispose of the same in accordance with the rules. This may be done within a period of 3 months from the date of receipt of a copy of this order.



Sd-
MEMBER [J] 9/11/93
bsv

TRUE COPY

Mr. [Signature]
SECTETARY OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd-
MEMBER [A]

17/11/93