

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1322/94

Date of Decision: 12.10.1999

V.N.Gorhe & Anr.

.. Applicant

Shri Ghaisas

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C.Dhawan

.. Advocate for
Respondent(s)

CORAM:

Shri
The Hon'ble Justice R.G.Vaidyanatha, Vice Chairman
The Hon'ble Shri D.S.Bawej, Member (A)

(1) To be referred to the Reporter or not? *No*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

(3) Library *Yes*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1322/94

Tuesday this the 12th day of October, 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

1. Vishnu Narhar Gorhe
R/o. 482, Shaniwar Peth,
Pune.
2. Suryakant Ramchandra Shinde,
R/o. Sai Shradha Apartment,
5th Floor, near Shanti Nagar
Bus Stand, Kalyan Ambernath Road,
Ulhasnagar No.3.Applicants

By Advocate Shri Ghisas

V/S.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.
2. Divisional Railway Manager,
Central Railway, Bombay V.T.Respondents

By Advocate Shri S.C.Dhawan

O R D E R (ORAL)

{Per: Shri Justice R.G.Vaidyanatha, VC}

This is an application filed by the applicants for fixation of pay and for consequential benefits. Respondents have filed reply opposing the application. We have heard the learned counsel appearing on both sides.

2. The applicants have retired from service from Central Railway as Electricians. They were entitled to get Rs.35/- as special pay which was denied to them. Therefore, both the applicants filed two OAs. previously and got the benefit of Rs.35/- as personal pay. Now, in the present OA. the applicants' case is that in view of grant of Rs.35/- as special pay, they are entitled to fixation of pay in the grade of Rs.1400-2300 on the basis of Railway Board Circular dated 2.7.1987. This is the sum and substance of the applicants' case.

3. The defence is that the application is barred by res-judicata and barred by limitation. The respondents also state that the applicants are not Electrical Mistries and hence not entitled to the benefit of Railway Board Circular dated 2.7.1987.

4. As far as merits are concerned, we have recently considered this question in detail in OA.NO.455/90 decided on 12.1.1998 where we have held that Electricians are neither entitled to special pay of Rs.35/- nor the pay scale of Rs.1400-2300.

But however as the applicants are concerned, they have been granted special pay of Rs.35/- p.m. The applicants have produced the copies of the order in the two cases. They are at page 29 and 34 of the paper-book. The first applicant had filed OA.NO.327/89 and second applicant had filed OA.NO.388/89. Both were disposed of by Division Bench of this Bench on 15.6.1992 granting the benefit of Rs.35/- as special pay. Therefore, we cannot go into the question whether the applicants are entitled to special pay or not in the present OA.

5. Now the question is whether the applicants are entitled to higher pay scale of Rs.1400-2300 in pursuance of the Railway Board Circular dated 2.7.1987 since they have been already granted special pay of Rs.35/-p.m. as per the two judgements of the Bench of this Tribunal.

The Circular is of 1987. The previous OAs. were filed in 1989. In the previous OAs. itself the applicants could have asked for both the reliefs of grant of Rs.35/- as special pay and consequential fixation of pay scale of Rs.1400-2300. Therefore, both the reliefs were available to the applicants when they filed previous OAs. Even the learned counsel for the applicants also conceded that he could have asked for such a prayer but since the special pay was granted by this Tribunal, they are still entitled to ask this Tribunal to fix pay in the scale of Rs.1400-2300.

6. The present OA. is not maintainable in view of the order 2 Rule 2 CPC which clearly provides that a person must ask all reliefs pertaining to cause of action and does not ask any relief without the leave of the court, then he is precluded from filing a fresh OA. in respect of that subject matter.

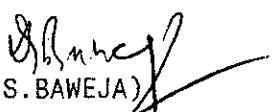
In the previous OA. the applicants could have asked for the relief for special pay and higher scale of pay. The applicants did not ask for the latter relief. The applicants retired from service in November, 1989. The previous OAs. were filed in 1989. The previous OAs. were disposed of in 1992. The present OA. is filed in 1994. The object of the law is to discourage

multiplicity of proceedings and to see that all disputes should be decided once and for all. Similarly principle of res-judicata under Section 11 CPC is also to discourage multiplicity of proceedings. Once the matter is concluded by a decision of Tribunal rightly or wrongly, then another suit cannot be filed for asking a relief which could have been asked on the earlier occasion. Even if entire CPC is not applicable to a case before the Tribunal, it is well settled that principles of Public Policy like res-judicata must be applied by courts or Tribunals to avoid multiplicity of litigation and to see that all disputes are decided once and for all. Present OA. is hit by the principles of res-judicata. Even under Section 11 CPC the relief which should have been asked and not asked cannot be asked in a subsequent litigation. It applies to all cases when party in the suit who could have asked the relief and not asked cannot be allowed to ask the relief in subsequent litigation. Therefore, in view of these principles of public policy, we hold that the present application is not maintainable.

7. The respondents' contention that the present OA. also suffers by delay, latches and barred by limitation is also not without force. If the relief is granted, it is going to be a burden on exchequer. The claim is purely a money claim. The applicants have retired in 1991 and this OA. has been filed in 1994. Therefore, the OA. is hit by Law of Limitation provided under Section 21 of the Limitation Act.

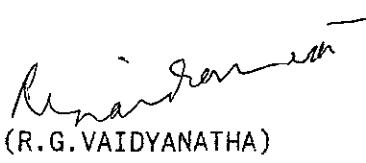
Therefore, on the above grounds we hold that no relief can be granted to the applicants.

8. In the result, the OA. is dismissed being devoid of merit.
No order as to costs.



(D.S. BAWEJA)

MEMBER (A)



(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.4/2000
& M.P.87/2000 IN O.A.1322/94.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

Vishnu Marahar Gorhe,
Ex.Electrician under
Electrical Foreman
Train lighting & A/c
Central Railway, Rs
Residing at 482 Shaniwar Peth,
Pune-411 030.

Suryakant Ramchandra Shinde
Ex.Electrician under
Sr.Divisional Electrical Engineer,
Mumbai - 400 071.

... Applicants.

v/s.

1. Union of India through
The General Manager,
Central Railway,
Mumbai CST - 400 001.

2. Divisional Railway Manager,
Central Railway,
Mumbai CST,
Mumbai-400 001.

... Respondents

ORDER ON RP-4/2000 ON CIRCULATION

DATED:6/3/2000

Per Shri Justice R.G.Vaidyanatha, Vice Chairman

This is a review petition filed by the original applicants to review our order dated 12/10/99 in OA-1322/94. Since there is delay for filing RP, MP-87/2000 is filed for condonation of delay. We have perused the RP, MP and entire materials on record.

2. We have dismissed the application on the ground that it is barred by res-judicata and also by Principles of Order^{1/2}, Rule(2) of CPC. Now no case is made out for review of our order.

...2.



3. It is stated that statement attributed to the Applicant's counsel in the order is factually incorrect. The order was dictated in open court in the presence of Applicant's counsel and we have put questions to him and it is now too late in the day to say that the statement recorded in our order is factually incorrect. There were no necessity for us to make a wrong statement or incorrect statement in our order particularly when the order has been dictated in open court and in the presence of the counsel.

4. Even if we ignore the statement attributed to the Counsel, it helps the applicant in no way, since applicants could have asked this prayer when they filed the previous OA and therefore they cannot be allowed to file fresh case. With or without a statement made by counsel, we reiterate that OA-1322/94 was not maintainable and is barred by res-judicata and the Principles ~~of~~ ^{of} order ~~11~~ Rule(2) CPC.

We do not find that there is any error apparent on record or ^{any} ~~any~~ sufficient ground to review our judgement.

5. There is also delay in filing review petition. No reasons are given for condonation of delay except that there is some delay and it should be condoned. Hence, we do not find any ground to condone the delay for filing review petition. Hence, even on the basis of limitation, the review petition has to be rejected. Even the MP for condonation of delay is liable to be rejected.



6. In the result, both the RP-4/2000 and MP-87/2000 are rejected, by this order on Circulation.

D.S. Baweja
(D. S. BAWEJA
MEMBER (A))

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp