

ABJ/2

In the Central Administrative Tribunal, Jodhpur Bench,  
at Jodhpur.

Date of Order July 19, 1990.

O.A. No. 745 of 1989.

--

Shri B.L. Agarwal

...Applicant

Mr. D.P. Ojha,

...counsel for the applicant.

Versus

Union of India & ors.

...Respondents

Mr. J.L. Daga,

...counsel for the Respondents

--

CORAM : The Hon'ble Shri Kaushal Kumar, Vice-chairman,  
The Hon'ble Shri T.S. Oberoi, Judl. Member.

T.S. OBEROI:

The applicant, who has already retired as a Travelling Inspector of Accounts (T.I.A.) from Western Railway, Ratham-II, has filed this application under sec. 19 of the Administrative Tribunals Act, 1985 (for short "the Act"), with a prayer that the Respondents be directed to pay Rs. 4015/-, withheld from the amount of his death-cum-retirement gratuity, payable to him at the time of his retirement with interest (as detailed in Anx. A/3) to the O.A.) along with interest on Rs. 500/- (already refunded to him) D.C.R.G., which had been withheld from his/as anticipated court expenses.

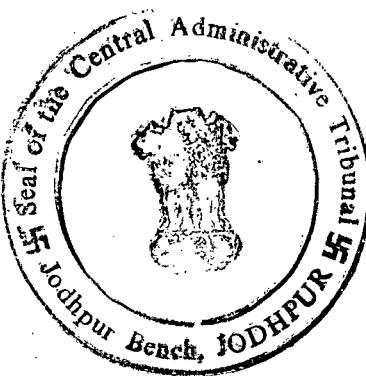
2. The other facts of the plaintiff's case, so far as necessary for deciding the present O.A.

2021

are as under:

i). the applicant had initially filed a suit in the court of Civil Judge, Second Class, Ratlam for injunction, seeking to restrain the Respondents from retiring him on November 30, 1978, on the basis of his date of birth, as recorded in his service record as November 5, 1920, as against November 5, 1921, according to the birth register of the Beawar Municipal Council.

ii). On an application seeking temporary injunction, the learned Civil Judge, in his order dated November 29, 1978, had passed an order, with the following English translation:

  
"On the basis of aforesaid submissions, presently in the interest of Justice, I accept/admit the application submitted by the plaintiff and it is hereby ordered that if the applicant does not succeed against the Respondents in the case, he will deposit back or refund back to the Respondents, the salary and allowances received by him during the period. Temporary injunction is issued, till the case is finally decided, to the effect that the Respondents will retire the applicant from service on finalisation of this case or 30-11-1979 whichever date is earlier and the applicant shall be allowed to continue in the present post."

iii). On an appeal by the Respondents, the learned Additional District Judge, Ratlam, while quashing/setting aside the above order, passed by the learned Civil Judge, passed an order with its English translation as under:-

*Ans*

"As a result, the appeal preferred by the appellants is admitted or allowed and the cross objection of the Respondent(employee) is rejected and the order passed by the

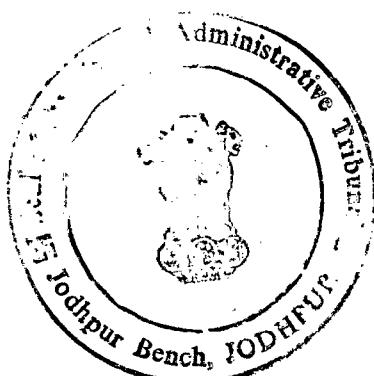
lower/subordinate Court dated 29.11.78 is set aside/and or quashed. Looking to the special circumstances of the case, it is ordered that the parties shall bear their own cost. Rupees 20/- is allowed as Advocate's fee."

iv). Thereafter, on the coming into force of the Administrative Tribunals Act, 1985 w.e.f. November 1, 1985, the above suit was transferred to the Jabalpur Bench of the Central Administrative Tribunal. However, because of the default in appearance, on behalf of the applicant, the Tribunal dismissed the suit/T.A. in default on July 6, 1987 (copy enclosed as Anx. R/3).

v). The applicant had filed the present O.A. before this Bench on August 8, 1989 with the prayer, as mentioned in para 1 above.

3. The Respondents, in their counter, had resisted the applicant's claim, primarily on the ground that with the dismissal in default of his original suit/T.A. by the Jabalpur Bench of the Tribunal, as mentioned above, the applicant is estopped from filing the present application, on the well-known principles of res-judicata as well as estoppel, without having first got restored his T.A. in the Jabalpur Bench of the Tribunal; and, secondly, on the point of limitation, his claim being grossly time-barred, as it relates <sup>to</sup> as far back as 1978-79.

4. The applicant, in the rejoinder filed by him, has reiterated his claim, submitting that the suit filed by him in the court of the learned Civil

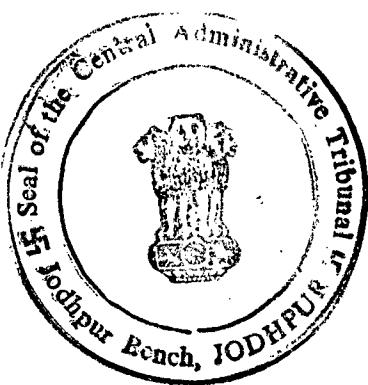


Judge, Ratlam, related to the correction of his date of birth, whereas, the present application concerns payment of his dues with interest, withheld from the amount of his death-cum-retirement gratuity and interest on the amount of anticipated court expenses, as mentioned above; and having settled within the jurisdiction of this Tribunal, after his retirement, the present application is competent, in accordance with sub-rule (2) of rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987.

5. We have heard the learned counsel for the Respondents, who vehemently contested the applicant's claim on the two grounds earlier mentioned, whereas, the learned counsel for the applicant urged the maintainability together with propriety of the applicant's claim, mainly on the grounds, mentioned in the O.A. and the rejoinder filed by the applicant.

6. We have given our careful consideration to the rival contentions, as briefly mentioned above. We have also carefully perused the pleadings of the parties, together with the documents filed along with the same.

7. As regards the first objection, raised by the Respondents in their counter, we are of the view that the present application being limited to the claim of the amount withheld by the Respondents and interest thereon and also with regard to the interest



- 5 -

on Rs. 500/- withheld as anticipated court expenses from D.C.R.G., by the applicant's as against the continuation of service by the applicant, on the basis of the alleged anomaly in the date of his birth, the principle of Res-judicata or that of Estoppel, would not stand as bar, to the maintainability of the present application. Further, in view of Rule 6(2) of the Central Administrative Tribunal (Procedure) Rules, 1987, we hold that this Bench has jurisdiction to decide the matter in hand.

8. As regards the question of limitation, since the applicant took up the matter with the respondents, quite well in time, and the latter had been informing the applicant that the sanction of the competent authority is awaited, the last communication in this regard being Anx. A-2 to the O.A., which is dated August 31, 1988, to our mind, the limitation would be reckonable from that date and hence, within time, the O.A. having been filed on August 8, 1989. We hold accordingly.



9. Now, coming to the amount and interest, claimed by the applicant, a perusal of the documents on record shows that even as per legal advice sought for by the Respondents (Anx. R-IV, item 11), the wages for the period the applicant actually worked, i.e. from December 1, 1978 to February 17, 1979, should have been paid to him. There is nothing on record that the condition imposed by the learned

*Verdict*

trial court that in the event of the plaintiff/applicant losing the case, he would be refunding the emoluments, was based on any undertaking, to this effect, in the application seeking temporary injunction or <sup>in</sup> the main plaint. Otherwise also, from the angle of principles of natural justice, we hold that as the amount of Rs. 4015/- represents the actual emoluments/wages for the period December 1, 1978 to February 17, 1979, paid by the respondents to the applicant, there is no justification for the same being with-held/retained by the Respondents.

10. As regards interest, if any, payable to the applicant, keeping in view the duration which is quite substantial, i.e., spreading over roughly, to about 12 years, during which the rates of interest had been varying, we feel that interest of justice would be met if the applicant is allowed interest @ 10% p.a. on the amount of Rs. 4015/- from the date it was with-held to the date of its payment, and at the same rate on Rs. 500/- from the date of its withholding ~~or~~ <sup>or</sup> to the date of its refund.

11. The application is decided on the above terms, with no order as to costs.

*19.7.90*  
(T.S. Oberoi),  
Judl. Member.

*19.7.90*  
(Kaushal Kumar),  
Vice-chairman.