

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO.

7/89

~~E.A. NO.~~

DATE OF DECISION 5-9-89

S. K. Satyanarayana

Petitioner

Mr. V. Venkateswaran

Advocate for the
Petitioner (s)

Versus

The G.M. Sch. Secy and anlt Respondent

Mr. N. R. Deva Reddy, SC for Rly

Advocate for the
Respondent (s)

CORAM

The Hon'ble Mr. J. N. Sabu Murthy, member (Jell)

The Hon'ble Mr. —

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. whether their Lordship, wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1, 2, 4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

NO

BNJ

BNJ

HVC

JNM: m(5)

O.A.7/89.

(Judgment of the Single Member Bench
delivered by Hon'ble J.Narasimhamurthy,
Member (Judicial))

This Application is filed by the Applicant
to direct the respondents to extend the benefits of
basic pay and allowances to which he is entitled under
Office Order No.14/General/64 dated 29-6-1964 with
all consequential benefits as per the Railway Board's
Circular No. PC-59/PS-9B/2 dated 1-10-1963 on the
subject holding the letter No.P/Law Cell/64B/88/80
dated 31-12-1987/4-1-1988 issued by the Chief Personnel
Officer, South Central Railway, Secunderabad as illegal
arbitrary and unconstitutional.

The applicant contends as under:

The pay of the applicant was fixed at Rs.130/-
in the scale of Rs.130--300 with effect from 1--6--1963
as per Office Order No.14/Genl/64 dated 30-6-1964.

Instead of arranging the payment of the said pay, the
Railway Authorities by their letter No.P/EST/644/Stenos
dated 23-8-1978 addressed to the Railway Board stating
that the applicant was granted personal pay from 1-6-1963
in order to protect the emoluments. The applicant
states that neither the enhanced basic pay was paid

nor protection of pay was extended. Therefore, the applicant filed W.P.No.5028/80 for the said relief in High Court of Andhra Pradesh which was dismissed and the matter was carried in Writ Appeal. In the Writ Appeal the High Court by its order dated 19-7-1987 direct the Railway Authorities to consider the case of the applicant in terms of para 2 of note (1) of the Railway Board's instructions dated 1-10-1963 and extend the benefits within four months from the date of the judgment, if not already given to him.

The applicant submitted his representation on 4-9-1987 requesting the Railway Authorities to draw the enhanced basic pay with effect from 1-6-1963 and regularise his pay with effect from 19-10-1965 in conformity with the Railway Board's letter dated 1--10--1963

The applicant states that the Railway Authorities ^{issuing} by ~~its~~ letter No.P/Law Cell/648/88/80 dated 31--12--1987/4-1-1988 stating that ~~my~~ ^{his} pay has been fixed at Rs.140/- plus 21 personal pay

with effect from 19--10--1965 is not correct. They have not made such fixation at all, and even if such fixation has been done, the benefits were not extended to him even as per their said incorrect pay fixation. The fact that the applicant was not given the basic pay and the other attendant allowances as per the fixation of pay done vide., letter No.H/P.524/VIII/2/Vol.II (Office Order No.14/General/64) dated 29-6-1964 with effect from 1-6-1963 can be found out by calling the particulars of payment made to the applicant and the pay sheets relating to the period from 1963 to 19--10--1965 are summoned. The extracts of the service register which the ~~applicant~~ proves beyond doubt the non-payment of ^{pay} the fixations to which he is entitled in the matter of fixation of pay with effect from 1-6-1963.

Thereafter the applicant filed O.A.No.37/88 in this Tribunal seeking a direction to extend the benefits accrued to him under the judgment of the W.A.No.708/83. The said O.A., was dismissed

Shyam

by this Tribunal holding that it was open for the applicant to approach the High Court of A.P., for non-implementation of its judgment by filing a contempt case against the Railway Authorities. The applicant filed a Contempt Case No.273/88 in the High Court of A.P.. The said contempt case was dismissed observing "Whether the pay scales thus fixed are in conformity with other requirements, it is for the Central Administrative Tribunal to adjudicate. So far as the present contempt case is concerned, the same is dismissed with the above observation. No costs." Therefore, the applicant filed this O.A., for the relief which he could not get ~~to~~ from the Railway Authorities. The applicant states that the Railway Authorities are setting up a different case against him everytime only to see that the applicant is denied of his legitimate right for payment of basic pay and allowances as per the fixation already made by them with effect from 1-6-1963 and the consequential benefits as per the Railway Board's Circulars on the subject. Hence this application.

6000

The respondents filed their counter contending as follows:

The applicant's main grievance is that his basic pay as Senior Typist has not been fixed taking into consideration special pay of Rs.30/- which he was drawing as a Steno-typist on his promotion as Senior Typist with effect from 1-6-1963. It is also stated that the applicant filed Writ Petition No.3874/69 before the High Court of A.P. and that Writ Petition was dismissed. Subsequently the applicant filed a C.M.P.No.8/79 before the Labour Court, Hyderabad. This C.M.P., was also dismissed by the Labour Court. The applicant ~~subsequently~~ filed another Writ Petition No.5028/80 in the High Court of Andhra Pradesh seeking for the same relief. The said Writ Petition was also dismissed on 24-2-1983 holding that Labour Court's decision has become final and it is not open to the applicant to agitate the very same issue in a Writ Proceedings. The learned Judge also expressed the view on merits that the applicant has no case for re-fixation of pay. The applicant after allowing the Labour Courts order to become final

and after dismissal of the Writ Petition No.5028/80 once again approached the Labour Court by way of an I.A.No.314/80 stating that an error has arisen from an accidental slip in the proceedings dated 1-9-1980 in CMP. 8/89. The Labour Court dismissed the said I.A., holding that there was nothing to show that the arguments ~~advanced~~ by the then Presiding Officer of the Labour Court were ~~not~~ actually put forward and that no case for amendment of the Order was made out by the applicant. Against this order in I.A.314/83 the applicant filed yet another W.P.No.1052/85 which is still pending. On the other hand, the applicant simultaneously filed Writ Appeal No.708/83 challenging the Judgment of the Labour Court in W.P.No.5028/80 dated 24-2-1983. The said Writ Appeal was ordered as follows:

"That the Railway Authorities be hereby directed to consider the case of the appellant herein in terms of para 2 of Note (1) of the Railway Board's letter dated Oct. 1,1963 and extend the benefit within 4 months from the date of this judgment, if not already given to him"

In obedience to the directions of the Hon'ble High Court of A.P., in the Writ Appeal, the case was considered in terms of the instructions referred therein and he was

advised by a letter dated 4-1-1988 that his pay was fixed correctly in accordance with the said instructions.

His pay as Typist in the scale of Rs.110-180 as on 29-11-1962 was Rs.125/- p.m. Pay as Sr.Typist in the scale of Rs.130-300 as on 1-6-1963 is fixed at Rs.130/- p.m. From the date of joining as Senior Typist in the scale of Rs.130--300 on 19-10-1965 he is eligible for his pay of Rs.140/- in the scale of Rs.130--300 but his emoluments as Steno-Typist was protected adding Rs.21/- as Personal pay to make good of the loss of emoluments. Hence his contention that his pay was not protected is not correct and is baseless. As could be seen from the above, he has been paid in excess. Therefore, he is not eligible for any arrears and on the other hand he is due to the Administration. As per the fixation of the pay shown in the counter salary has been drawn from 1-6-1963 correctly and paid. The applicant is claiming to show the records after a period of 25 years. The preservation period of paid vouchers is 15 years only and the records asked for by the applicant are not available at this distant date. As per the rules in

force the fixation of pay has been correctly done to see that there is no loss in his emoluments after becoming Senior Typist. It is stated that the respondents never denied the legitimate dues to the applicant and his request is to get unintended benefits. The applicant has been agitating repeatedly before various Courts right from 1969 and all Courts have substantially dismissed his prayer for fixation of pay as sought for by the applicant since there are no rules entitling the applicant the relief sought for. The Railway Board's letter dated 1-10-1963 also does not in any way entitle him for the said benefit. The Applicant has not made out any case and there are no merits in the applicant and it has to be dismissed.

Heard the learned counsel for the Applicant and Shri N.R. Devaraj, Standing counsel for the Railways.

The main argument advanced by Mr. Devaraj, learned Standing Counsel for the Railways is that the Applicant is agitating for the same relief which he has agitated in the High Court, Labour Court and in this Tribunal. Those Courts have dismissed the Applicant's claim. Again for the same relief the applicant has come to this Tribunal. The decision

given by the High Court and Labour Court will operate as res judicata in this Application and the application cannot be entertained and it has to be dismissed.

As per the facts on record, the applicant filed W.P.No.3874/69 before the Hon'ble High Court of Andhra Pradesh for the same relief and that Writ Petition was dismissed. Subsequently he filed C.M.P.No.8/89 before the Labour Court, Hyderabad. That C.M.P., was also dismissed by the Labour Court. The applicant further filed W.P.No.5028/80 in the High Court seeking the same relief. The said W.P., was also dismissed on 24-2-1983 holding that the Labour Court's decision has become final and it is not open to the petitioner to agitate the same issue in a writ proceeding. The learned Judge also expressed his view on merits that the applicant has no case for re-fixation of his pay. Not satisfied with it, the applicant after allowing the Labour Court's Order becoming final and after dismissal of W.P.No.5028/80 again approached the Labour Court by way of I.A.No.314/80 stating that an error has arisen

by an accidental slip in the proceeding dated 1-9-1980.

The applicant requested the Labour Court to correct the error arising by an accidental slip. By an order dated 17--12--1984, the Labour Court dismissed the said I.A., holding that there is nothing to show that the arguments advanced before the then Presiding Officer were not actually putforward and that no case is made out for amendment of the order ~~was made out by the~~ applicant. Against this order I.A.314/83, the applicant filed another Writ Petition No.1052/85 which is still pending. W.P.No.1052/85 is still pending on the one hand and on the other hand the applicant simultaneously filed W.R. No.708/83 challenging the Judgment of the Labour Court. ~~84.WxRxNo.8888/88~~

~~8888 88xx8xx888x~~ The history of the case discloses that the applicant has filed number of writ petitions in the High Court for the same relief and also filed petitions in the Labour Court and High Court.

The applicant cannot agitate his claim repeatedly in various courts for the same relief.

The parties are same the subject matter is the same in all the petitions filed by him in various courts.

It is not open to the applicant to agitate his claim in a number of Courts. Even though the matter was disposed of by those courts, the applicant still agitating the same issue in this Tribunal.

Taking into consideration of these facts and in the circumstances of the case, I see no merit in this case ^{and also} as it is barred by res judicata.

The application is dismissed. No costs.

M.S.
(J. NARASIMHA MURTHY)
Member (Judicial)

SSS.

S. Venkateswaran
DEPUTY REGISTRAR (U)
ref 915

70

- ① The General Manager,
S.C. Railway, Secunderabad. ✓
- ② The chief Personnel officer,
S.C. Railway, Secunderabad. ✓
- ③ One copy to Mr. V. Venkateswaran Rao, Alwarkur
I-1-287/27, Chikkadpally, Hyd-20. ✓

One copy to Mr. N. R. Devanag, Sec for Phys, CFT, Hyderabad ✓

One spare copy. ✓

Cy
cc
or
or

130
Copy
22/9 -