

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::  
AT HYDERABAD

O.A.No.1084/91.

Date of Decision: 20.4.92

Between:

Ch. Venkateswara Rao .. . . . . Applicant  
Vs.

1. Union of India, rep. by  
General Manager, S.C.Rly.,  
Rail Nilayam, Sec'bad.
2. Divisional Railway Manager,  
S.C.Rly., Vijayawada Divn.,  
Vijayawada.
3. Divisional Engineer, Doubling,  
S.C.Rly., Vijayawada. .. . . . Respondents

For the applicant : Sri G. Ramachandra Rao, Advocate.  
For the respondents : Sri J.R.Gopal Rao, S.C. for Rly.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

XJUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J. ROY, MEMBER(J) X

.....

This application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking direction to the respondents to pay a sum of Rs.23,080/- to the applicant towards refund of the amounts deducted and also towards interest at 12% per annum for the belated payments of pension, commuted pension, provident fund, security deposit and pass such other or further orders.

2. The applicant retired from service on 28-2-1982 as Head Clerk, Stores (Deposit works), Bitragunta, S.C.Railway on attaining the age of superannuation. The applicant alleges

that the respondents illegally withheld his terminal benefits like pension, provident fund, gratuity including salary for the month of February, 1982 on the ground that there was a departmental enquiry against him relating to the shortage of some materials in the Stores. The applicant states that on 22-10-1980 a charge-memo was issued to him alleging certain shortage of materials in the Stores and that a departmental enquiry/commenced in the year 1981. The applicant further averred that criminal cases were also pending against him on the alleged charges of shortage of stores etc. and that the said cases ended in acquittal. It is stated that, as the terminal benefits were not paid to him immediately after his retirement, he had filed a case before the Industrial Tribunal at Guntur and the same was dismissed as premature. The applicant also states that he had also approached the Hon'ble High Court of A.P. but the same was dismissed for want of jurisdiction, and therefore, he had filed an application before this Tribunal in O.A.No.14/1990 and the same was allowed by Judgment dt. 23.8.1990. The applicant averred that the respondents released the amounts which were withheld in terms of the Judgment in the above referred O.A. The applicant, in the present O.A. claims the following amounts -

1. Amount recovered towards alleged shortage of materials from the salary payable to the applicant for the month of January/February, 1982 Rs.673/- -- Interest on the above amount at 12% p.a. from 1.3.1982 to upto date. Rs.800-00
2. Interest on security deposit (i.e.) Rs.275/- @ 12% p.a. from the date of retirement to 10-8-1991. Rs.280-00
3. Interest on provident fund @ 12% p.a. from the date of retirement till the actual date of payment (i.e. 16-5-1988). Rs.2000-00
4. Interest on belated payment of pension @ 12% p.a. from the date of retirement till December, 1984. Rs.5000-00

5. Interest rate of 12% p.a. on the commuted pension (ie) Rs.13,900/- from the date of retirement till the date of actual payment of Commuted Pension Rs.15,000-00

3. The applicant alleges that he is entitled to the payment of interest for the belated payments towards pension, commuted pension, provident fund etc. on the ground that the respondents withheld the said payments without reasonable ground and caused for the said delay. The applicant states that he made a representation claiming the above ~~said~~ sums but the same was rejected by respondents on 6.7.1991 and 30.8.1991. It is further alleged that there is no rule under which the respondents could withhold the payments.

4. The respondents filed counter affidavit denying the allegations made in the application. The respondents state that the applicant was not paid the Settlement benefits viz. pension, provident fund, gratuity and salary for the month of Feb., 1982 on the ground that there was a departmental enquiry against him. It is stated that the applicant was also issued with a charge sheet for shortage of store materials to a tune of Rs.87,039-00 for imposing a major penalty. The respondents further stated that a case was also filed against the applicant herein on the file of Special Judge, at Visakapatnam and that the said case was ended on 11.12.1986 wherein the applicant was awarded with two years R.I. However, the applicant carried the matter in appeal on the file of High Court of A.P. wherein the applicant was acquitted. The respondents also state that the applicant was also responsible for the shortage of materials to the extent of Rs.28,178-55 ps. and the same was adjusted against the settlement dues of the petitioner by recovering a sum of Rs.23,133-78 and balance was written off.

5. The respondents averred that the applicant was paid provisional pension @ Rs.444/- with effect from 1.3.1982 by orders dt. 1.9.1984. It is also stated that the provident fund assets were also released to the applicant pursuant to the Judgment of the Hon'ble High Court, A.P. in Criminal Appeal wherein the applicant was acquitted. The respondents further state that they had paid the sums viz. (a) DCRG - Rs.14674-25 ps. , (b) Leave Encashment Rs.7301-25 ps.; (c) Salary for the month of Feb., 1982 - Rs.430-10 (Rs.1158-28 Gross salary less recoveries), to the applicant in compliance of the Judgment of this Tribunal in O.A.No.14/1990. The respondents state that since there was a case against the applicant, they had released the sums under provident fund, in pursuance of the Judgment of the Hon'ble High Court, A.P. The respondents also state that the security deposit of Rs.275/- was paid to the applicant on 30.8.1991 soon after the O.A.No.14/90 was disposed-of by this Tribunal. The respondents deny the claim of interest on pension, commuted pension and P.F. Assets and Security Deposit. The respondents state that the claim of the applicant against item No.1 to 5 are barred by limitation, resjudicata, while stating that the applicant had an opportunity to raise all the said claims in the O.A.No.14/90 and also that the Hon'ble Tribunal decided the claims of the applicant in the said O.A. The respondents averred that in terms of para 315 of MRPR the President reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specific period and the right of ordering a recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceedings, the pensioner was found guilty of grave misconduct or negligence during the period of his service. The respondents also state that as/para 316 [redacted] a Railway Servant who has retired at the age of compulsory retirement or otherwise shall be paid the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service where departmental proceedings per

are continued. The respondents further state that in terms of para-1202 of MRPR a Railway servant against whom a judicial or departmental proceedings have been instituted or continued under Rule 2308 R.II, shall not be permitted to commute any part of his pension during pendency of such proceedings. The respondents justify their action accordingly and desires the application be dismissed.

6. The applicant filed copies of representations submitted by him to the respondents dt. 2.1.1991 and reply given by the respondents dt. 30.8.1991.

7. We heard Sri Pandu Chary, proxy counsel for Sri G.Rama-chandra Rao, learned counsel for the applicant and Sri J.R. Gopal Rao, learned counsel for the respondents, and perused the records carefully.

8. It is pertinent to mention that the applicant retired from service on 28-2-1982. From that date onwards he is aware of all eligible payments due on all accounts viz. pension, DCRG etc. to be claimed by him. In O.A.No.14/1990 which was filed 8 years subsequent to his retirement, he raised all the points pertaining to his claims. If not raised, it shall be deemed to have <sup>been</sup> <sub>his</sub> raised all claims. After considering all his claims on all points in the said O.A. the Hon'ble Members in para-5 of the order gave a direction -

"Hence the respondents are liable to pay the applicant commuted pension due to the applicant and the sum of Rs.23,133-78 ps. illegally withheld. The applicant would also be entitled to interest at 12% p.a. on the latter sum of Rs.23,133-78 ps. from the date of retirement till the date of actual payment."

In their order, the Hon'ble Members have specifically stated that the respondents had admitted that -

"they had withheld in all (emphasis added) a sum of Rs.23,133-78 ps. towards items (ii) to (iv) above."

Item (i) in the said O.A. is with regard to Commuted Pension. The Hon'ble Members after considering all the aspects held that the respondents are liable to pay the applicant the commuted pension due to the applicant and a sum of Rs.23,133-78 ps. They had further clarified that the applicant would be entitled to interest @ 12% p.a. on the latter sum of Rs.23,133-78 ps. from the date of retirement till the date of factual payment. The claim of commuted pension was allowed but interest was not allowed. Therefore, the applicant cannot file fresh O.A. for that matter which had already been heard and disposed-of. Had he been aggrieved, he would have filed a Review Petition. He did not prefer any Review Petition, but filed the present O.A. The interest on commuted pension is not only actually not awarded, but also badly barred by limitation. <sup>In this O.A.</sup> The applicant had every opportunity to raise all his ~~claims~~ in the said O.A. No.14/90 as it was filed subsequent to his retirement and the decision cited supra was taken while ordering to pay commuted pension. The applicant, therefore, cannot agitate for the interest when it was not awarded in the said O.A. claiming it as a separate cause of action. In the said O.A. 14/90 he also claimed salary for Feb., 1982. Here also he claims salary for Feb., 1982 mentioning as Jan/Feb. 1982. Having claimed the salary for Feb., 1982, he could have claimed the salary for Jan., 1982 there only. How he can claim now. Both the counsel agree that the said sum of Rs.23,133-78 ps. was paid to the applicant with interest during the arguments.

9. Another point raised by the learned counsel for the applicant is that law of res-judicata does not apply here. Section 22 of the A.T.Act says -

"A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure"

However, in the said section it is stipulated that we have to be guided by the principles of natural justice and shall have power to regulate the procedure. When the words 'shall not be bound' are used, it means that Tribunal though not bound by it, can take guidance from other laws as words of 'natural justice' are used. It is not out of place to mention here that under sub-section (3) it says that -

"A Tribunal shall have, for the purposes of (discharging its functions under this Act), the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sec.123 & 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or, documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter which may be prescribed by the Central Government."

Since we are conducting judicial proceedings as stated in Sec.30 of the A.T.Act, and when the above said (a) to (i) are necessarily made as a part and parcel of this Act, we fail to see how we cannot take the phrases of 'res-judicata' with its meaning into this case, if it is necessary in the interests of justice. In several judgments of this Tribunal like O.A.No.660/90 the case was decided on res-judicata.

10. We are not prohibited to borrow any analogy from any source. If that is the intention of the legislature they would have stated specifically that this Tribunal is prohibited from using the provisions of C.P.C. except as stated above. That means we are given a judicial liberty in order to achieve the object of coming to a right conclusion. It also indicates if we could follow we are not committing any error and if not followed also we are not committing any error. (2)

11. We take the meaning of word 'bound', which means 'the limit of that which is reasonable or permitted, to limit, to restrain, or to surround'. It appears to me that 'shall' need not necessarily be mandatory, but similarly whenever the word 'may' is used it may be mandatory. In that context it can be said that the word 'may' also can be used sometimes in the statutes to indicate 'mandatory', as 'shall' could be also used as 'not mandatory' depending upon the circumstances. The Hon'ble Supreme Court in a case [ JT 1992 (2) SC 298 ] regarding construction of the word 'shall' held as under -

"INTERPRETATION OF STATUTES - Construction of the word 'shall' whether mandatory or directory? - It depends upon the intentment of the enactment or the context in which the word 'shall' has been used and the mischief it seeks to avoid' -

16. Under the circumstances we dismiss the O.A. No order as to costs.

R.Balasubramanian

( R.Balasubramanian )  
Member (A)

( C.J. Roy )  
Member (J)

Dated 20th April, 1992.

grh.

  
Deputy Registrar (Judl.)

Copy to:-

1. General Manager, South Central Railway, Rail Nilayam, Sec-bad.
2. Divisional Railway Manager, South Central Railway, Vijayawada Division, Vijayawada.
3. Divisional Engineer, Doubling, South Central Railway, Vijayawada.
4. One copy to G.Ramachandra Rao, advocate, CAT, Hyd-bad.
5. One copy to Sri. J.R.Gopal Rao, SC for Railways, CAT, Hyd.
6. Copy to reporters and All Benches as per standard list of CAT, Hyderabad Bench.
7. One copy for Deputy Registrar (Judl.), CAT, Hyderabad.
8. One spare copy.

Rsm/-

  
20/4/92

O.A. 1084/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.S.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :  
MEMBER (JUDL)

AND

THE HON'BLE MR. C.J. ROY : MEMBER (JUDL)

Dated: 20/4/1992.

ORDER / JUDGMENT

R.A./C.A./M.A. No.

O.A. No. 1084/91

T.A. No.

(W.P. No. )

Admitted and interim directions  
issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

pvm.

