

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

RA No.6/2006 in OA No.346/2005.

Jaipur, this the 4th day of July, 2006.

1. Yad Ram
S/o Sawan (since expired)
2. Shivcharan,
S/o Shri Devi Singh,
Aged about 46 years,
R/o Gram Judawai, Tehsil Mathura,
District Mathura.

... Applicants.

Vs.

1. Union of India
Through General Manager,
Western Central Railway,
Jabalpur (M.P.).
2. The Divisional Railway Manager,
West Central Railway,
Kota Division.
Kota.
3. The Divisional Railway Manager
West Central Railway,
Jaipur.

... Respondents.

: O R D E R (BY CIRCULATION) :

The applicants in OA No.346/2005 have filed this Review Application for reviewing the order dated 9.5.2006 whereby the OA was dismissed on the ground that the present OA was clearly hit by the principle of res-judicata and also amounts to abuse to the process of this court as the relief regarding payment of TA&DA was not pressed by the Learned Counsel for the applicant in earlier OA. The OA was also dismissed on the ground of limitation.

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2. By way of this Review Application, the applicant has stated that they did not agitate the claim of TA&DA in the previous OA, as such, no question of the same being decided in earlier OA does not arise.

3. It is shocking to notice that the applicants in Review Application and Learned Counsel for the applicant who has signed and filed this Review Application has again reiterated that no such issue was decided by this Tribunal in the earlier OA. At this stage, it will be useful to quote Para 2 and 3 of the Review Application where such contention has been raised, which thus reads as under :-

"2. That so far as first contention is concerned that in para No.5 of the decision of the OA it was stated by the counsel that he will not agitate the TA and DA, it is most humbly submitted that the previous OA was not filed for TA and DA, so no question was arise to submit anything about TA and DA. In this respect the copy of the previous OA shall be kept ready for kind perusal of this Hon'ble Tribunal. So law is clear that if the case has not been pleaded and no relief has been sought, then no question has arisen to decide the same. In the same reference it is submitted that no question of resjudicata can be arise because the claim for TA and DA neither was claimed nor was prayed, since it was not prayed and claimed, therefore, no question of decision was arise.

3. That the Hon'ble Tribunal has held that only because of statement of counsel in the earlier OA, the OA is not maintainable. It is submitted that no statement was made by the counsel because that case was not for TA and DA. This Hon'ble Tribunal in the decision dt. 9.5.2006 has held that in previous OA, the claim for TA and DA was not pressed by the advocate but it is apparently mistake on record because it was nowhere mentioned by learned Tribunal in the decision of previous OA, that the relief in regard to TA and DA has not been pressed. There is a complete distinction and different in the word of

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not pressed and not agitated. Had the word not pressed used by the counsel in previous OA the position would have been different. But this OA has been decided on the assumption that relief for TA and DA was not pressed by the learned counsel of the applicant in previous OA. One more thing that this Hon'ble Tribunal in para No.6 of the said decision has held that the same advocate who had made statement before Tribunal that claim for TA and DA is not being agitated, is also not correct. There is a difference between the word 'did not agitate' and 'is not being agitated'. The term 'did not agitate' only show that no claim has been claimed by the applicant and he has not claimed for TA and DA. Certainly in that OA the Ta and DA was not claimed. Even if that statement is taken into consideration, though it was not there, then also this Hon'ble Tribunal has dismissed the OA on the ground that at the time of argument he has not pressed such claim. Therefore, this OA has been decided under the misconception of the facts that in previous OA the relief for TA and DA was not pressed, but this is not the fact.

It will also be useful to quote last portion of Para 2 of the judgment where contention of the applicants in earlier OA No.530/01 has been noticed and thus reads as under :-

"..... The grievance of the applicants is that they are low paid employees and their Headquarters has been changed arbitrarily, malafidely and discriminately as persons junior to them have been retained in Kota Division. It is stated that the applicants were not paid TA and DA when they were asked to work in Mumbai and that they are unable to look after their family which reside in Rajasthan. It is prayed that the respondents be directed to reports the applicants in Kota Division."

In para 5 of the judgment dates 25.3.2003 rendered in OA No.530/2001, in which the review applicants were parties and the Hon'ble Tribunal has made the following observations :-

"5. The objection as to the territorial jurisdiction was not pressed by the respondents. The applicants counsel did not agitate for the TA and DA for Mumbai as the applicants are being paid the House Rent Allowance of Mumbai.

4. Thus, from conjoint reading of para 2 and 5 of the judgment as reproduced above, it is clear that the contention was raised before the Tribunal by the applicants regarding non payment of TA & DA when they were asked to work in Mumbai and this Tribunal has categorically held that the applicants counsel did not agitate for the TA and DA for Mumbai as the applicants are being paid the House Rent Allowance of Mumbai. On the face of such contention raised by the Learned Counsel for the applicant on behalf of the applicants and findings recorded by the Tribunal in Para 5 of the earlier judgment, the Review applicant(s) cannot be heard to say that no such contention was raised in the earlier OA, thus, the present RA is not barred by the principle of resjudicata. Thus, the present Review Application is totally misconceived. It is a case where the applicant should have been imposed heavy cost for filing repeated OA without any merit which amounts to abuse to process of court. But I am leaving the matter here. In case the applicant(s) have not pleaded the fact regarding TA and DA in the earlier OA on which point finding has been recorded by the Tribunal, only course available for the applicants was to file review petition and certainly the second OA was not remedy. Further in case the applicants wanted to decide the matter only on one point viz.

regarding change of their Headquarter from Mumbai to Jaipur and did not want any finding regarding grant of TA & DA, in that eventuality, it was open for them to plead before the Hon'ble Tribunal not to give finding on that point and liberty should have been reserved for filing fresh OA on such point. Having not done so and in the face of categorical finding recorded by the Tribunal that the applicants counsel did not agitate for TA and DA for Mumbai, it is not legally permissible for the applicants to file subsequent OA thereby agitating the matter for TA and DA for the period when they remain posted at Mumbai.

5. On the face of finding recorded in Para 5 in the earlier OA, the only irresistible conclusion which can be drawn is that applicants have abandoned their claim regarding TA and DA and second OA is not maintainable, more particularly when no liberty was granted to the applicants by the Tribunal in earlier OA to agitate this point by filing subsequent OA. Thus, principle of constructive resjudicata/resjudicata is clearly attracted and second OA is certainly abuse of process of court. As regards finding recorded on the point that the present application is barred by limitation, the applicants have not made out any case for reviewing the judgment on that point. Admittedly, the applicants have not filed any application for condonation of delay. This Tribunal has categorically held that the claim of TA and DA is not a

continuous cause, as such, the limitation has to be reckoned from the date when the right to receive the same has accrued which in the instant case is from 1998 till 2003. The only ground taken by the applicant is that this Tribunal has not taken the notice of the facts stated in the notice for demand of justice and the facts stated in the letter dated 23.4.2004 (Annexure A/8). However, the Review applicants^{is} conspicuously silent as to how, even if, these two documents were taken into consideration the applicant has made out a case for grant of condonation of delay in terms of the law laid down by the Apex Court in the case of Secretary to the Government of India v. Shivram Mahadu Gaikwad, 1995 SCC (L&S) 1148 and another decision of the Apex Court in the case of Ramesh Chand Sharma v. Udeham Singh Kamal, (1999) 8 SCC 304. The Review applicant has also taken up a new ground for reviewing the judgment thereby stating that this Tribunal has held that since the applicant is receiving HRA in Mumbai, so they are not entitled to TA and DA, in fact no such finding has been recorded by this Tribunal on this aspect. The matter has been decided only on the ground of limitation as also on the ground that the second OA i.e. the present OA for which review is sought is clearly hit by the principles of res judicata and also amount to abuse of process of this Court on the ground that similar relief was not pressed by the present review applicant in earlier OA. It is well settled that a Review cannot be claimed or asked for merely for a fresh

hearing or arguments or correction of erroneous view which is sought to be projected by the applicants in this review application.

6. For the foregoing reasons, the Review Application is dismissed.



(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./