

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.482 of 1999

Jabalpur, this the 5th day of March, 2003

Hon'ble Mr. Justice N.N. Singh - Vice Chairman  
Hon'ble Mr. R.K. Upadhyaya - Member (Administrative)

Bhagwan Das Baiswal, aged 59 years,  
son of Shri Ramsukh Baiswal, Retd. Pump  
Driver Gr-II from Harda Central Railways,  
Harda, At present residing at H.No.77,  
Kashipura, Indore (MP)

-APPLICANT

(By Advocate - Shri R.K. Verma)

Versus

1. Union of India, through the Secretary,  
Ministry of Railways, Rail Bhawan, New Delhi.

2. The General Manager, Central Railways,  
Bombay V.T., Bombay.

3. The Divisional Railway Manager, Central  
Railways, Bhopal (MP)

- RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R

By R.K. Upadhyaya, Member (Adminv.) -

The applicant has claimed the following reliefs:-

(i) a writ in the nature of mandamus may kindly be issued directing the respondents to pay the petitioner scale of Rs.1200-1800 and thereafter of the post of Gr-II Pump Driver w.e.f. 1.1.84 as has been given to his contemporaries selected vide order dt. 6.2.89, along with interest;

(ii) That a direction may also be issued to the respondents to pay the difference of salary of Gr-III Pump Driver and of Gr-II Pump Driver in pursuant to the promotion given to him w.e.f. 1.1.84;..."

2. It is stated by the applicant that he was appointed on 18.10.1982 as Pump Driver. It is claimed by the applicant that there was a combined trade test of Grade-II and Grade-I on 27.12.1988. The persons who appeared with the applicant in such trade test and passed, were promoted as Grade-II Pump Drivers vide order dated 6.2.1989 and the benefit was extended to them with effect from 1.1.1984. Such persons were placed on a pay scale

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of Rs.1200-1800. Since the applicant was denied the promotion in spite of having been<sup>a</sup> successful candidate, he filed O.A.No.173/1990 which was decided on 29.1.1997. In spite of the directions of the Tribunal, the applicant was not promoted, therefore, CCP 68/1997 was filed.

3. The respondents in their return have stated that in pursuance to the order of this Tribunal dated 29.1.1997 in OA 173/1990, promotion order dated 9.6.1997 has been issued by which the applicant has been given proforma seniority with effect from 1.1.1984 - the date from which his junior was promoted. The respondents have further stated that the applicant has not shouldered the responsibility of higher post i.e. Pump Driver Gr.II during the said period, therefore, he was not entitled to difference of salary with effect from 1.1.1984 on the basis of 'no work no pay'. The respondents have further stated that the present application is not tenable in law as the same is hit by the principles of res judicata.

4. We have heard the learned counsel of parties and have perused the material available on record including the records of OA 173/1990.

5. The applicant in OA 173/1990 had claimed the following reliefs:-

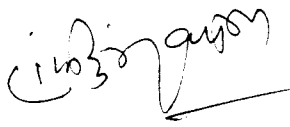
"(1) The applicants pray for award of grade II pay of Rs.1200-1800 by virtue of their seniority, experience of working as Pump Drivers length of service period, their ability of management of Pump Works as well as by way of weightage of being Scheduled Caste employees.

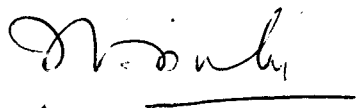
(2) These awards of promotions be granted from the date their juniors were upgraded to Rs.1200-1800 on account of the upgradation of Pump Drivers Posts at Harda station".

5.1 From the above, it is seen that the applicant's claim was for being promoted in the grade of Rs.1200-1800. There was no claim for any arrears of salary or interest. There is even no claim of any consequential relief. On these facts, we are of the opinion that the claim of

the applicant is barred by principle of constructive res judicata under Section 11 Explanation 4 of Civil Procedure Code, which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. The Hon'ble Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, 1996 (6) SCALE 403 reversed the order of Ernakulam Bench of this Tribunal where interest was granted to the applicant in that case, which was not earlier claimed and allowed while granting arrears of salary to the applicant. The Hon'ble Supreme Court held that when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. Since it was not done, the principles of res judicata prohibits such a payment to the applicant.

5.2 Respectfully following the same principle as enunciated by the Hon'ble Supreme Court in the case of T.P. Kumaran (supra) we are of the considered view that the applicant, having not claimed arrears of salary and interest thereon in OA 173/1990, the same cannot be claimed in the present proceedings. In this view of the matter, this OA being devoid of merit is dismissed, without any order as to costs.

  
(R.K. Upadhyaya)  
Member (Admnv.)

  
(N.N. Singh)  
Vice Chairman

rkv.

पृष्ठकन सं. ओ/न्या.....जबलपुर, दि.....  
न्यायिक अधिकारी

(1) न्यायिक अधिकारी, जबलपुर

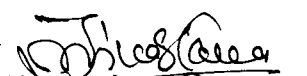
(2) न्यायिक अधिकारी, जबलपुर

(3) न्यायिक अधिकारी, जबलपुर

सूचना एवं आचार्य

R K Upadhyaya

S P Singh

  
20/8/03

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88