

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 334/2006.

Jaipur, this the 27<sup>th</sup> day of November, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. J. P. Shukla, Administrative Member.

Shiv Mohan Singh  
S/o Shri Phool Singh  
R/o 190, Subhash Colony,  
Shastri Nagar,  
Jaipur.

... Applicant.

By Advocate : Mr. Shailendra Shrivastava.

Vs.

1. Union of India  
Through General Manager (E),  
North West Railway,  
In front of Railway Hospital,  
Jaipur.
2. Divisional Railway Manager,  
North West Railway,  
Jaipur.
3. Sr. Divisional Mechanical Enginer,  
Jaipur Division,  
Jaipur.

... Respondents.

: O R D E R (ORAL) :

The applicant has filed this OA thereby praying for the following reliefs :-

"(a) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to pay differential pay of the post of Train Superintendent to the petitioner for the period from 06.12.1990 to 10.05.1997 along with interest.

(b) By an appropriate order, it may also be directed to grant overtime allowances to the petitioner for the extra hours worked by the petitioner as T.S in

addition to scheduled duties keeping in view the prevailing practice in his Railway.

© That the direction may also be given to the respondents for re-fixing the pension of the petitioner after taking in to account the salary of the post of T.S which he would have drawn at the time of retirement and to pay differential amount of pension in terms of arrears.

(d) Respondents may further be directed to pay interest on the differential amount, which is due and yet to be drawn from the due date till the date on which dues are likely to be paid.

(e) Any other order in favour of the petitioner, which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case.

(f) Award the cost of the petition."

2. Briefly stated, the facts of the case are that the applicant retired on superannuation on 31.7.1997, while he was working in the post of Train Superintendent on Palace on Wheels. He claimed over time allowance for a period from 6.12.1990 to 10.05.1997 as he claimed to have worked for 7700 hours and as per Schedule of payment he was entitled to payment of Rs.3,50,908/-. When his claim was denied by the respondents he filed OA before this Tribunal thereby praying for the aforesaid amount along with interest at the rate of 24% per annum from the month of December 1990 till the payment is not made to him. The said OA was registered as OA No.62/2002 which was dismissed vide order dated 6.6.2003 on the ground of limitation as well as on merit. The matter was further carried by filing Writ Petition before the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench. The said petition came to be dismissed vide judgment dated

25.4.2005 and finding recorded by the Tribunal regarding merit of the case was maintained. The Hon'ble High Court on the basis of pleading also came to the conclusion that the applicant was given compensatory rest as per Railway Policy in lieu of making payment for extra hours of work. Thus, he cannot claim over time allowance as well. The Hon'ble High Court also rejected the plea of discrimination as raised by the applicant. The judgment of the Hon'ble High Court has been annexed with this OA as Annexure A/3. Thereafter, the applicant, for the first time, vide representation dated 25.3.2006 (Annexure A/5) made a representation before the authorities as his claim for over time allowance in the capacity of HTXR has been rejected on the ground that the applicant was working as TS, as such, he should have been given the pay of the higher post of TS than the post of HTXR.

3. We have heard the Learned Counsel for the applicant at admission stage.

4. At the outset, it may be stated that this OA is misconceived, hopelessly time barred and amount to abuse the process of Court and is also barred by the principle of res-judicata and as such, it is not necessary for us to examine the case on merit.

5. The principle of estoppel per remjudicatam is "the broader rule of evidence which prohibits the reassertion

of a cause of action". This doctrine is based on two theories (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of

litigation. Courts have therefore treated such a course of action as an abuse of its process. This is, therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive res judicata which, in reality, is an aspect or amplification of the general principle."

6. This is what the Apex court has held in the case of State of UP vs. Nawab Hussain, 1977 SCC (L&S) 362, which is the decision rendered by the constitution Bench of 3 Judges.

7. Viewing the matter from the aforesaid angle, it is clear that the claim of the applicant pertains to the period w.e.f. 6.12.1990 to 10.05.1997 when he was allegedly working as TS on Palace on Wheels. Admittedly, at that time he was in the scale of HRKR, no appointment on the higher pay scale was ever granted to the applicant, neither during that period, nor after his retirement on superannuation on 31.7.1997, he has made any claim for higher pay scale. As already stated above, he filed OA regarding payment of over time allowance as according to him he has worked for 7700 hours over and above the normal work hours. The said claim was negated

by this Tribunal as well as by the Hon'ble High Court of Rajasthan. It is for the first time when he made a representation dated 27.03.2006 to the authorities i.e. after a lapse of about 16 years from which date when he initially start working as Train Superintendent on Palace on Wheels in the year 1990 and about 9 years after his superannuation in 1997. Thus such a claim of the applicant cannot be entertained at this stage. Further it was permissible for the applicant on the same set of facts to claim relief regarding payment of over time allowance or in the alterative to grant him higher scale in lieu of work performed by him as Train Superintendent on Palace on Wheels. Having not done so, the applicant cannot be permitted to raise this plea at this stage in view of the law laid down by the Apex court in the case of Nawab Hussain (*supra*), relevant portion of which has been extracted above.

8. Though, we have stated that we are not examining the case on merit, however, we wish to refer to the decision of the Apex Court in the case of State of Punjab and Anr. vs. Balakran Singh, JT 2006 (9) SC 178, which is squarely applicable in the case of the applicant, even if, the matter is required to be considered on merit. That was a case where the respondents therein were recruited as Agricultural Officers in the pay scale of Rs.400-1250/-, subsequently revised to 940-1850/-. Such officers posted as Deputy Director claims the pay scale of Rs.1200-1850

as admissible in respect of the Deputy Directors. The Apex Court has held that since they were not appointed to substantive post of Deputy Director, as such, they cannot claim the pay scale of the Deputy Director and their posting as Deputy Director was on account of administrative reason only. In the instant case also, the applicant has not been appointed as Train Superintendent in the higher pay scale, even if, he was deployed as Train Superintendent, though for all intents and purposes he was holding the post of HTXR, he is not entitled to enhanced the pay scale in view of the law laid down by the Apex Court in the case of Balkaran Singh (supra).

9. For the foregoing reasons, the OA being bereft of merit is accordingly dismissed at admission stage with no order as to costs.

  
(J. P. SHUKLA)  
ADMINISTRATIVE MEMBER

  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

P.C./