

**Central Administrative Tribunal
Principal Bench**

OA No.2005/2013

New Delhi, this the 24th day of August, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

C. D. Prasad
S/o Late Chhton Bhagar
R/o D-56, Gali No.5,
Durga Vihar, Phase-II,
Dinpur, Najafgarh,
New Delhi 110 043. ... Applicant.

(By Advocate : Ms. Harvinder Oberoi)

Vs.

Union of India through

1. The Director General (Works)
Central P.W.D.,
Nirman Bhawan,
New Delhi 110 011.
2. Superintending Engineer (Electrical)
Patna Central Electrical Circle,
Central P.W.D.,
Indra Bhawan, Bailey Road,
Patna, Bihar 800001.
3. Executive Engineer (Electrical)
Patna Central Electrical Division,
Central P.W.D. Punai Chak,
Patna, Bihar 800023. Respondents.

(By Advocate : Shri Rajinder Nischal)

: O R D E R (ORAL) :

Justice Syed Rafat Alam, Chairman :

This is an Application under Section 19 of the Administrative Tribunals Act, 1985, commanding the respondents to make payment to the applicant in respect of the balance amount of salary in US Dollars 3329 by calculating 50% of the net amount after usual compulsory deductions, in US Dollar, at the official rate of

exchange from 23.06.1988 to 31.05.1991 and at 75% from 01.06.1991 to 18.08.1992, fixed from time to time.

2. Ms. Harvinder Oberoi, learned counsel for the applicant vehemently contended that despite the order of the Patna Bench of this Tribunal, the respondents have not made the payment.

3. On the other hand, Shri Rajinder Nischal, learned counsel for the respondents raised an objection regarding maintainability of the Application on two grounds. Firstly, the Application is heavily barred by time as the cause of action arose, admittedly, in the year 2007 and the Application under Section 19 of the Act is filed in the year 2013 after a period of six years without making any prayer for condonation of the same as no separate application seeking condonation of delay has been filed as required under the CAT (Procedure) Rules, 1987. Secondly, the issue regarding payment of difference in Dollars calculating the 50% of net emoluments of the applicant in US Dollars at the official rate of exchange for the aforesaid period has already been adjudicated upon by the Patna Bench of this Tribunal in OA No.176 of 1993 vide order dated 10.03.1999 and, therefore, for the same relief, second application cannot be maintained. He further submits that after the order of the Tribunal in OA No.176 of 1993, the applicant also moved CCPA No.45 of 2000 which was decided on 08.03.2005 with the following directions:-

“The contemners-respondents are hereby directed to ensure that the order of this court passed in OA No.176 of 1993 may be implemented in full within two months from the date of receipt/production of this order. It is further clarified that :-

- (i) 50% of the net emoluments being foreign allowance for the period 23.06.1998 to 31.05.1991;
- (ii) 75% of the net emoluments in U.S. Dollars for the period 1.6.1991 to 18.8.1992 may be paid to the petitioner at the rate prevalent during the period within three months from the date of issue/production of copy of this order.

9. The contempt petition is accordingly disposed of at this stage. However, if the order is not complied with in full by due date, after the date of communication of the order to the respondents by the petitioner, the petitioner will be at liberty to get the present contempt petition revived for further proceedings in the matter. No costs."

Thereafter, the aforesaid CCPA was revived and on 02.01.2007, Patna Bench of this Tribunal in CCPA No.45/2000 passed the following orders:-

"5. The learned counsel for the applicant further states that as per the judgment of this Tribunal, the applicant is entitled for 10,745 US Dollars, whereas the respondents have paid only 7,476 and the remaining 3,269 US Dollars are still to be paid to the applicant.

6. Since there is a dispute regarding the exact amount due to the applicant, therefore, it is open for the applicant to file a detailed representation regarding balance of 3,269 US Dollars before the concerned respondents and in turn the respondents shall decide the same by reasoned and speaking order within three months from the date of receipt of copy of the representation.

7. The CCPA stands disposed of and the rule issued also stand discharged as such."

In compliance to the aforesaid order, the respondents issued order dated 30.07.2007, a perusal whereof reveals that the variation in the amount from Rs.1,55,298.50 to Rs.1,46,000.00 is caused on account of necessary correction in the calculation statement being incorrect as per actual. In respect of the payment of CCG grant and outfit allowance, it was intimated that the same is not admissible as approved by DG(W), New Delhi, and the payment of US \$7466.14 in lieu of Rs.1,46,000.00 due to the applicant has

already been paid at the varying exchange rate prevalent at the time of payment. The applicant did not admittedly challenge the aforesaid order. We are, therefore, of the view that it has rightly been argued on behalf of the respondents that in the event the aforesaid order dated 02.01.2007 in CCPA No.45/2000 & MA No.509/2005 was not complied with, the remedy was to file a contempt petition, but it does not give a cause to file fresh OA, besides the same being heavily time barred without coming forth with any plausible explanation for such inordinate delay.

4. In rejoinder, learned counsel for the applicant, however, sought to argue that there is no delay as it is a continuing cause of action and as such the objection raised regarding delay is untenable. The second submission that in respect of the same relief, an OA was filed in Patna Bench is not disputed by the learned counsel for the applicant. However, it is sought to be argued that the respondents did not honour the order and played a fraud before the Patna Bench placing wrong chart of currency exchange rate whereupon the calculation was made, and as such said objection cannot be raised in this Application.

5. We do not find force in the submission. In our view, when no payment was made despite clear direction in the OA, and thereafter in the CCPA vide orders dated 08.03.2005 and 02.01.2007, the cause of action arose and the application ought to have been filed within a period of one year as provided under Section 21 of the Act and, therefore, the Application is heavily barred by time. The contention that it is a continuing cause of action has also no force,

and cannot be accepted in the facts of the case. The payment, as claimed on account of the exchange rate became payable to the applicant admittedly, in the year 1992, and was adjudicated by the Patna Bench of the Tribunal in OA No.176/1993 vide order dated 10.03.1999, as noted earlier, and that cannot be said to be a continuing cause of action. Recurring-successive wrongs are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. The Apex Court in **Balkrishna Savalram Pujari & others v Shree Dhyaneshwar Maharaj Sansthan & others** [AIR 1959 SC 798] explained the concept of continuing wrong, and held as under:

“It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by itself continues, then the act constitutes a continuing wrong.”

As noted earlier, in the case in hand, the cause of action arose in the year 1992 when the amount of exchange rate became payable to the applicant, and the above act or injury was complete at that time. Where the fixation of pay is made by applying wrong principles, which ultimately continues to affect the future salary, then it could be said to be a continuing cause of action, and, therefore, the cause of action arises every month when the salary is paid on the basis of wrong computation or contrary to rules. The letter dated 30.07.2007 further reveals that an amount of Rs.5,43,467/- accrued as interest on the sum of Rs.1,46,000/-, which was lying with the applicant for varying period from

23.06.1988 to 24.06.2002, and, therefore, he was called upon to pay the interest, which he has not paid. For all these reasons and especially for the reason that he has not challenged the aforesaid order dated 30.07.2007, in our view, this Application is not maintainable even on merit, besides being time barred.

6. It is well settled position that the second application in respect of same relief without there being any fresh cause of action between the same parties cannot be maintained. In similar circumstances, the Apex Court in ***State of Tamil Nadu & Ors. vs. Amala Annai Higher Secondary School*** [(2009) 9 SCC 386], held that the second petition at the instance of Management without there being any fresh cause of action is an abuse of the process of court. In the case in hand, since the issue is concluded by the judgment of the Patna Bench, as noted above, the same cannot now be re-opened by entertaining the second application moved by the same party.

7. We are, therefore, of the view that this Application is misconceived and it is accordingly dismissed. However, if certain amount returned by the applicant has not been reimbursed to him, as submitted by Shri Rajinder Nischal, in the event he makes a detailed representation giving details about the aforesaid amount, an appropriate decision would be taken in accordance with law. We, therefore, provide that it would be open to the applicant to make such representation. We have no doubt that the respondents shall dispose of the same by passing a speaking order

expeditiously, preferably within a period of three months from the date of filing of such representation.

7. With the above order, this Application stands dismissed.

(P. K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/pj/