

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00613/2018

Chandigarh, this the 2nd day of November, 2018

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

...

Harmesh Pal Singh age 64 son of Sh. Sarwan Singh resident of House No. 16, Krishan Colony, Mallawala Road, near Plaza Marriage Place, Ferozepur City – Group 'C'

....**Applicant**

(Present: Mr. N.S. Bains, Advocate)

Versus

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
3. Senior Divisional Personnel Officer, Northern Railway, Ferozepur Division, Ferozepur Cantt.

Respondents

(Present: Mr. Yogesh Putney, Advocate)

**ORDER (Oral)
SANJEEV KAUSHIK, MEMBER (J)**

1. By way of the present O.A., the applicant has sought mainly the following relief:-

- (i) To direct the respondents to allow the interest @ 9% p.a. on the payment of Rs.1,29,749/- (till the actual release of this amount i.e. from 01.01.2013 to 08.02.2018) recovered from his Death-Cum-Retirement Gratuity on the ground of payment of excess salary)
2. Learned counsel for the applicant submitted that he does not wish to file any rejoinder and the matter may be heard, at this stage, to which learned counsel for the respondents consented.
3. Heard.
4. The facts are not in dispute.

5. Learned counsel for the applicant submitted that in pursuance of order of this Court in earlier O.A. (NO.060/00931/2016) filed by the applicant, the recovered amount of Rs.1,29,749/- has been released to him but he is also entitled to interests @ 12% on this amount for the period the respondents withheld it and the same may be awarded to him.

6. Learned counsel for the respondents opposed the claim of the applicant and raised a preliminary objection of res-judicata, while submitting that the claim of the applicant for award of interest has already been deemed to have been rejected by this Court in his earlier round of litigation (O.A. NO. 060/00931/2016 decided on 14.09.2017), therefore, this O.A. is barred by principles of res judicata and be dismissed as such. He has relied upon a decision dated 14.10.2016 in O.A. No. 060/00197/2016 rendered on 14.10.2016 titled **Sushil Kumar Vashist Vs. The comptroller & Auditor General of India and Ors.**, where this Court has observed that the second O.A. filed by the same applicant for the same relief, which has already been heard and decided in his earlier O.A., is not maintainable.

6. We have carefully considered the matter and perused the pleadings available on record.

7. This is the 3rd round of litigation by the applicant. Firstly, the applicant approached this Tribunal, by way of filing O.A. NO. 060/00568/2015, with a prayer for a direction to the respondents to release his retiral benefits along with interest @ 12% p.a. till the date of realization, which was allowed and the respondents were directed to release the due payment along with interest @ 9% p.a. from 01.01.2013 till the release of actual benefits. Subsequent to

that, the applicant moved second O.A. (No. 060/00931/2016) challenging the action of the respondents in recovering the amount of excess paid salary from his due payment of DCRG, and claimed interest on the recovered amount. That O.A. was allowed vide order dated 14.09.2017 (Annexure A-3) while relying upon the ratio of law laid down by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih, 2015 (1) SCT 195**, however his prayer for award of interest did not find favour by this Court. Thus, in that O.A., the applicant though prayed for award of interest but could not succeed, therefore, the present O.A. seeking the same relief which has earlier been considered and declined by this Court, is barred by the principle of constructive res-judicata and is not maintainable on this ground. Explanation V to Section 110 of CPC, 1908 clearly provides that "any relief claimed in the plain, which is not expressed granted by the decree, shall, for the purposes of this section, be deemed to have been refused. In that view of the matter, the applicant is not allowed to file a second O.A. for the same relief on the same grounds, which has already been adjudicated upon by this Court. The decision of this Court in the case of Sushil Kumar Vashist (supra), relied upon by the respondents, squarely covers the issue involved herein.

8. In view of the above, the O.A. is dismissed being not maintainable. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 02.11.2018

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