

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. MA 350/00349/2016  
OA 350/00499/2016

Present: Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

KSHITINDRA KR. CHOUDHURY

VS

UNION OF INDIA & ORS. (N.F.R.LY.)

For the applicant : In person

For the respondents: Mr.B.P.Manna, counsel

Heard on : 11.11.2016

Order on : 29.11.2016

O R D E R

Ms.Jaya Das Gupta, A.M.

The applicant Kshitindra Kr. Choudhury has approached CAT in person under Section 19 seeking the following relief :

"If my case is accepted and admitted, I shall pray to the Hon'ble Bench to decide, what will be my basic pension Rs.6536/- per month w.e.f. 1.1.16 or Rs.10,949/- p.m. w.e.f. 1.1.2006 with arrears in accordance with law."

He had further submitted an MA application for amendment of the relief to the extent that pension should be treated as RS.16536/- instead of Rs.6536/- as it is a typographical error.

2. On perusal of the record it seems that the applicant had initially approached CAT, Guwahati Bench in the Original Application No. 271/2012 where the order dated 10.10.12 ensued, the relevant portion of which is extracted as under :

"3. Applicant appeared in person, He is a pensioner and retired on 31.7.1990 from the post of CTTI. His last posting was in NJP, Katihar.

4. The Full Bench of this CAT, Principal Bench vide its common order dated 1.11.11 rendered in OA Nos. 655/10, 3079/09, 306/10 & 507/10, reported in Swamy's News in its issue of January, 2012, took into consideration the very purpose for making specific recommendation for revision of pension of pre-2006 pensioners. The commission has decided to enunciate a principle for the future revision of pensions to the effect that complete parity should be maintained. The Commission has

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accepted the guiding principle which would assure that past pensioners will obtain complete parity between pre-2006 and post-2006 pensioners.

5. We have noted that law is trite on the subject. Therefore, respectfully following there precedent we hereby direct the respondents to re-fix the pension of the applicant w.e.f. 1.1.06 as per prescription of the formula of the 6<sup>th</sup> CPC and Full Bench decision of the CAT, Principal Bench dated 1.11.11 cited above. Let the respondents re-fix the pension of the applicant and pay the arrears thereof within a period of three months from the date of receipt of a copy of this order.

6. In the result, OA stands allowed. There will be no order as to costs."

3. As orders were not made by the respondent authorities within the time period of three months, a Contempt Petition No.4/12 was lodged. As the applicant did not appear on the said date an ex parte order was passed on 6.5.13 as follows :

"None appeared for the petitioner. Mr.M.K.Majumdar, learned standing counsel for the railways submits that the order of this Tribunal has been duly complied with.

This Tribunal vide order dated 10.10.12 passed in OA NO. 271 of 2012, directed the respondents to re-fix the pension of the petitioner w.e.f. 1.1.06 as per prescription of the formula of the 6<sup>th</sup> CPC and Full Bench decision of the CAT, Full Bench dated 1.11.2011 rendered in OA No. 655/10 and series. The respondents were further directed to re-fix the pension of the petitioner and pay the arrears thereof within three months from the date of receipt of that order.

On 27.12.12/3.1.13, the railway department re-fixed the pension of the petitioner at Rs.8041/- in terms of 6<sup>th</sup> CPC recommendation. Today, Mr.M.K.Majumdar, learned standing counsel for the railways produces a copy of revised pension payment order dated 13.3.13 of the petitioner, whereby the respondents pension of the petitioner has been fixed at RS.8145/- w.e.f. 24.9.12.

In view of the full compliance of the order of this Tribunal, EP is closed.

Copy of the order dated 13.3.13 shall be kept on record."

4. From the above order of the Guwahati Bench made in the Contempt Petition, it is seen that his pension had been fixed to Rs.8145/- w.e.f. 24.9.12. Such contempt petition was dropped as compliance had been made by the respondent authorities (Annexure A/6)

5. It transpires that the applicant transferred his case from CAT., Guwahati Bench to CAT, Calcutta Bench presumably because after his retirement he is located in West Bengal. An order was passed by CAT, Calcutta Bench on

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29.7.15 in OA 1524/13 & OA 764/14 which was recalled and a fresh order was passed on 30.9.15 which runs as follows :

"The order dated 29.7.15 is recalled. OA 1524/13 and OA 764/14 are taken up for hearing afresh with the consent of the parties.

2. Heard the applicant appearing in person and Mr.B.P.Manna, ld. Counsel appearing for the respondents.
3. With the consent of the parties the matters are taken up analogously for disposal.

**OA 1524/13** has been filed seeking the following relief :

"In view of the facts mentioned in above paragraph I want to the honourable Bench order to be passed so that I can get the new re-fixation table, new PPO according to the orders of the court and an order to compel the respondents to give. I did not get any information about the matter which I am entitled to get and the respondents to supply me and other pre 2006 pensioners and implement orders of the Court."

While **OA 764/14** has been filed seeking the following relief :

"I want to get basic pension w.e.f. ;1.1.2006 with arrears Rs.11718/- p.m. or 14958/- accordingly to the formula ordered in the judgment of the Principal CAT, New Delhi para 13 page 21 and 22 in the recommendation of 6<sup>th</sup> CPC and accepted by the Govt. and also supported by Delhi High Court."

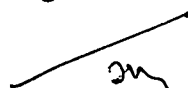
4. It is noticed that in OA 271/12 preferred by the present applicant before Guwahati Bench, the applicant sought for similar relief of revision of pension w.e.f. 1.1.06 in terms of 6<sup>th</sup> CPC and the order of the Full Bench of the Tribunal, Principal Bench dated 1.11.11 rendered in OA No. 655/10, 3079/09, 306/10 & 507.10 and to pay the arrears. In the said OA Guwahati Bench had already directed the respondents as follows :

"to re-fix the pension of the applicant w.e.f. 1.1.06 as per prescription of the formula of the 6<sup>th</sup> CPC and Full Bench decision of the CAT, Principal Bench dated 1.11.2011 cited above. Let the respondents re-fix the pension of the applicant and pay the arrears thereof within a period of three months from the date of receipt of a copy of this order."

5. As such OA 764/14 seeking basic pension w.e.f. 1.1.06 in terms of Principal Bench judgment i.e. the same/identical relief as prayed for in the earlier OA 271/12 but in a round about way would be clearly barred by principles of res judicata. Similarly his prayer seeking re-fixation would be barred by constructive res judicata. If the applicant was aggrieved due to non-implementation of the order of Guwahati Bench, the appropriate recourse would be a fresh OA seeking implementation of the orders or an execution application before the Guwahati Bench or a contempt application before the Bench alleging violation of its orders. Here we seek to be guided by the judgments infra :

- i) In **Satyadhyan Ghosal & Ors. -vs- Smt. Deorajin Debi & Anr. [AIR 1960 SC 941]** Hon'ble Apex Court held as follows :

"The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as



between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law-has been decided between two parties in one suit or proceeding and the **decision is final**, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in s. 11 of the Code of Civil Procedure; but even where s. 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

ii) In **Ahmed Adam Sait -vs- M.E.Makhritha [AIR 1964 SC 107]** Apex Court considered the principles of constructive res judicata thus:

"It is clear that section 11 read with its Explanation VI leads to the result that a decree passed in suit instituted by persons to which Explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under section 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matter directly and substantially in issue in the said earlier suit."

iii) In **Devi Lal Modi, Appellant -vs- Sales Tax Officer, Ratlam [AIR 1965 SC 1150]** a Constitutional Bench of the Hon'ble Apex Court succinctly laid down the following proposition of law :

"Though the Courts dealing with the questions of the infringement of fundamental rights must consistently endeavour to sustain the said rights and should strike down their unconstitutional invasion, it would not be right to ignore the principle of res judicata altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights.

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If constructive res judicata were not applied to such proceedings, a party could file as many writ petitions as he like and take one or two points every time. That clearly was opposed to considerations of public policy on which res judicata was based and would mean harassment and hardship to the opponent. Besides, if such a course were allowed to be adopted, the doctrine of finality of judgments pronounced by the Supreme Court would also be materially affected."

iv) In **P.K.Vijayan -vs- Kamalakshmi Amma [AIR 1994 SC 2145]** Hon'ble Apex Court held as under :

"It is sheer abuse of the Court to raise at each successive stages different pleas to protract the proceedings or to drive the party to the multiplicity of proceedings. It would be fair and just that the parties raise all relevant pleas in the suits or the proceedings when the action is initiated and the omission thereof does constitute res judicata to prevent raising of the same at a

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later point of time. Thereby it must be deemed that they are waived."

v) Hon'ble Apex Court in the case of **Maharashtra Vikrikar Karmachari Sngathan -vs- State of Maharashtra [AIR 2000 SC 622]** has taken the same view.

In the aforesaid legal backdrop we dismiss OA 764/14.

6. We note that the applicant is essentially seeking basic pension w.e.f. 1.1.06 but he is not aware of the amount which would accrue to him in terms of the formula rendered by the Principal Bench and the 6<sup>th</sup> CPC recommendations accepted by the Govt. By way of OA 1524/13 he has sought for issuance of a new PPO.

7. We also note that the applicant is an octogenarian. He has filed umpteen numbers of cases ventilating his grievance in regard to his pension in various ways and manner but has literally harped on the same issue in regard to improper fixation of his pension. He has essentially sought for fixation in terms of the formula promulgated by the Principal Bench.

8. To give a quietus to the dispute which may have arisen due to non-implementation of the orders already passed in favour of the applicant and in the interest of justice, since this Tribunal is empowered to make orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice in terms of Rule 24 of CAT (Procedure) Rules, 1987 promulgated under the aegis of Sections 35 & 36 of A.T. Act, 1985, we direct the authorities to give a personal hearing to the present applicant in order to ascertain his basic grievance within one month from the date of communication of this order.

9. Upon due consideration of his grievance appropriately and in accordance with law, the authorities shall pass an order in regard to his claim within two months thereafter.

10. The OA 1524/13 is accordingly disposed of. No order is passed as to costs."

6. Accordingly as per the order a speaking order was issued dated 30.12.15

(Annexure A/9) which is extracted as under :

"No. E/105/7-90/TEC/FS

Date : 30.12.15

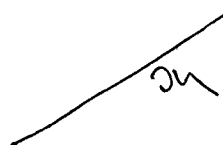
To

Shri Kshitindra Kr. Choudhury, Ex.CTTI/NJP/N.F.Railway,  
7 Park Avenue, MD Complex,  
P.O.Burnpur, District-Burdwan, West Bengal - 713325.

Sub : Compliance of order dated 1.7.230.9.2015 passed by Hon'ble CAT/Calcutta Bench, Kolkata in OA No. 1524 of 2013 & 764 of 2014 (Shri K.K.,Choudhury -vs- UOI & Ors.)

In compliance of above order, the applicant Shri K.K.Choudhury was called vide this office letter No. E/105/Engg/06-2015/FS dated 15.10.2015 for giving personal hearing to him on 29.10.15, but he did not attend. He was again called on 26.11.15 vide this office letter No. E/105/Engg/06-2015/FS dated 6.11.15. He remained absent again. He, however, attended on 17.12.15.

In order to ascertain his basic grievance, he was requested to explain his basic grievance along with supporting documents. He claimed re-fixation of his pension.



His Final Settlement is gone through. The record reveals that Shri Choudhury retired voluntarily from Railway Service w.e.f. 31.7.1990 from the post of CTTI/NJP. At the time of his retirement his basic pension was fixed @ Rs.1177/- per month vide PPO No. KIR/PN/7071 dated 31.8.1990, which was subsequently revised to Rs.3558/- per month w.e.f. 1.1.1996 based on the recommendation of 5<sup>th</sup> CPC. His basic pension was again re-fixed to RS.8042/- w.e.f. 1.1.2006 according to recommendation of 6<sup>th</sup> CPC [Consolidated pension as per Ready Beckoner annexed with OM No. 38/37/08-P&PW(A) dt. 1.9.08 (Para 4.2)] and revised PPO No. KIR/PN/7071 dated 29.3.2012 issued. The re-fixation of Pension under 6<sup>th</sup> CPC is illustrated as under :

1.	Pension under 5 <sup>th</sup> CPC	Rs.3558.00
2.	50% DP on pension	Rs.1779.00
3.	Total of above	Rs.5337.00
4.	24% DA on Rs.5337.00(Item No.3 above)	Rs.1281.00
5.	Fitment weightage @ 40% of existing pension i.e. 40% of Rs.3558.00	Rs.1423.00
6.	Total of above (item No. 1 to 5)	Rs.8041.00
7.	Pension Fixed (w.e.f. 1.1.2006)	Rs.8042.00

In terms of Railway Board's instructions as contained in letter No. F(E)III/2008/PNI/12 dated 11.2.13, the above pension (Rs.8042/-) was subsequently revised to Rs.8145/- w.e.f. 24.9.12 vide PPO No. KIR/PN/7071 dated 12.3.13. Further, Railway Board vide their letter No. F(E)III/2008/PNI/12 dated 31.7.15 has issued instructions that - 'in compliance of judicial pronouncements as referred in the said letter, the revised pension fixed in terms of letter F(E)III/2008/PNI/12 dated 11.2.13 should be given effect w.e.f. 1.1.06 instead of 24.9.12'.

The above re-fixations of his pension made by this office were then shown to him to satisfy his queries. But, he insisted re-fixation of his pension by granting grade pay at par with regular in service Railway employee. He was shown the fitment weightage applicable to his case. His hypothetical claims were difficult to understand. Despite knowing the fact that this office is not a judicial forum he continued citing different judicial orders. Every effort was made to remove his misconceptions.

In view of the above, it is mentioned that the action taken by this office is in accordance with the Railway Board's instructions on the subject and there is no discrepancies in the pension fixation of Shri Choudhary."

7. A Review Application was again filed in CAT, Calcutta Bench vide RA 8/15 [CP 3/13 (DN), OA 271/12 (Guwahati), OA 655/10 (PB)]. An order was passed on 1.1.16 rejecting the Revision Petition. Because of his grievance after rejection of the Review Petition the applicant has again approached the CAT in the present OA seeking reliefs on which the Tribunal/Tribunals have already given orders.

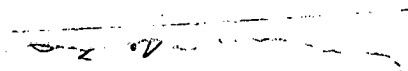
8. On going through the records it appears that the applicant is seeking the same reliefs on which orders of CAT, Guwahati Bench and CAT, Calcutta Bench has been obtained. As same relief has been sought which was already

disposed of in previous OAs, this Bench does not have the jurisdiction to examine this OA as this is barred by the principle of res judicate.

9. This OA has no merit and accordingly it is dismissed. No order is passed as to costs.



(JAYA DAS GUPTA)  
MEMBER (A)



(JUSTICE VISHNU CHANDRA GUPTA)  
MEMBER (J)

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