

CENTRAL ADMINISTRATIVE TRIBUNAL
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No. OA 1524 of 2013
OA 764 of 2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

KSHITINDRA KR. CHOUDHURY

VS

UNION OF INDIA & ORS. (N.F.RLY.)

For the applicant : In person

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

Order on : 30.9.15

O R D E R

Ms. Bidisha Banerjee, J.M.

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 6th 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 6th 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 6th 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 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 6th 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.

(R.BANDYOPADHYAY)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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