

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 16.12.2025

DELIVERED ON: 16.12.2025

CORAM:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WP.CT. 160 of 2015

With

I.A. No. CAN 1 of 2016 (Old CAN 6449 of 2016)

Dilip Kumar Das

Versus

Union of India & Ors.

Appearance:-

Mr. S.P. Dalapati

Mr. A.K. Gayen

Mr. A.A. Gayen

Ms. Asumpdita Santrafor the Petitioner

Mr. Ajay Chaubey

Mr. Sanajit Kr. Ghosh

Ms. Anamika Pandey

Mr. Asit Kumar Deyfor the respondents

JUDGEMENT (ORAL):

SUJOY PAUL, ACJ:-

1. Parties are represented by their respective learned counsels.
2. This petition takes exception to the order of the Central Administrative Tribunal, Calcutta Bench, Kolkata dated 14.05.2015 passed in OA No. 1104 of 2013, whereby OA was dismissed on the ground of limitation and considering the fact that it is barred by *res judicata* by taking into account the previous order of tribunal passed in OA 408 of 2013, which was upheld by High Court in WP.CT. 274 of 2013.

3. The matter has a chequered history. The petitioner first filed OA 829 of 2005 before the tribunal, which came to be decided by order dated 13.01.2009. Paragraph 10 of said order reads thus:

“10. We, therefore, direct that the applicant’s pay should be re-fixed from the date he joined at Calcutta on mutual transfer on the basis of last pay drawn while he was at Jamalpur. Pay last drawn has to be protected if necessary by giving a personal pay. This exercise may be completed within a period of three months from the date of communication of this order and consequential arrears given to the applicant.”

4. In furtherance of tribunal’s order, by office order dated 09.04.2009 (Annexure-A6)), the pay fixation of petitioner was redone. Dissatisfied with this re-fixation, petitioner filed representation dated 22.04.2009 and another dated 03.08.2009. Thereafter, he filed OA 408 of 2013, which came to be decided on 20.05.2013. The tribunal dismissed the OA as barred by limitation. Aggrieved, petitioner filed WPCT 274 of 2013 before this Court. This Court by order dated 03.07.2013 dismissed the writ petition by holding that there is no merit in the petition.
5. The petitioner then filed OA 1104 of 2013 before the tribunal for self-same relief. Admittedly, the relief claimed in OA 408 of 2013 and OA 1104 of 2013 are *ditto*. The tribunal dismissed this OA 1104 of 2013 by order dated 31.07.2014 on the ground of *res judicata* and limitation. Paragraph 3(h) of the said order dated 31.07.2014 reads as under:

“(h) We fail to support the pleadings of the applicant. This matter has already been dismissed on the ground of limitation under Section 21 of Administrative Tribunal Act, 1985 on 20.05.2013 and the above order has been upheld by the Hon’ble High Court. We cannot sit on judgment on the orders given by Hon’ble High Court, specially when the matter is res-judicata on the point of limitation as the same cause of action continues.”

6. The petitioner assailed this order dated 31.07.2014 before this Court in WP.CT. 11 of 2015. This Court set aside the order of tribunal dated 31.07.2014 and directed the tribunal to decide the issue raised in OA 1104 of 2013 on merits.
7. Upon remand/restoration of OA 1104 of 2013, the parties were heard and tribunal passed the impugned order dated 14.05.2015. The relevant portion reads thus:

“3. The second round of litigation with OA 408/13, where the same relief was asked for as in the present OA, the OA was dismissed being barred by limitation. The said order was upheld by the Hon’ble High Court in WPCT No. 274/2013. The learned counsel for applicant prays that since this Tribunal did not enter into merits of this case, the present OA seeking the same relief is not barred by principle of res-judicata. However, we find otherwise. After entering into the merits of the matter, the OA was dismissed.

4. We have heard learned counsel for both the parties. We are of the considered opinion that dismissal of an application on the ground of limitation after entering into merits of the matter definitely constitutes a bar of res-judicata if filed for second time with the same prayer. Furthermore, since admittedly the applicant was given a pay of more than of Rs. 5000/- as he was earlier getting in Jamalpur with effect from 16.12.1998 in terms of the order passed in OA 829/05, no interference is called for in the action of respondents. In such view of the matter, the OA is dismissed.”
(Emphasis Supplied)

8. Sri Dalapati, learned counsel for petitioner upon receiving instruction from the advocate on record submits that it cannot be doubted that the relief claimed by the petitioner in OA 408 of 2013 is exactly similar/identical to the relief claimed in OA 1104 of 2013. True it is, that the order passed in OA 408 of 2013 got a stamp of approval from this Court in WP.CT. 274 of 2013, the matter got re-opened in view of order passed by the High Court in subsequent WP.CT. 11 of 2015 decided on 20.01.2015. In this round of

litigation, since direction was issued to decide the matter on merits, the tribunal was obliged to decide the matter on merits and it was no more open to the tribunal to assign the reason the reason of *res judicata* and limitation.

9. Sri Chaubey, learned counsel for respondents supported the impugned order of the tribunal.
10. During the course of hearing, we have carefully perused the relief claimed by the petitioner in both OAs viz., OA 408 of 2013 and OA 1104 of 2013. As fairly admitted by Sri Dalapati, the relief claimed in both the OAs are exactly same. This is also an admitted fact that against the order passed in OA 408 of 2013, whereby application was dismissed on the ground of limitation, the High Court had affirmed the order on 03.07.2013 in WP.CT. 274 of 2013.
11. The whole case of petitioner is founded upon the subsequent order of this Court dated 20.01.2015 passed in WP.CT. 11 of 2015. As noticed, tribunal in paragraphs 3 and 4 of the impugned order has still relied on the order passed by this Court in WP.CT. 274 of 2013 ignoring the fact that yet another WP.CT. 11 of 2015 was filed by petitioner, which was decided on 20.01.2015. This Court had taken note of its previous order dated 3rd July, 2013 passed in WP.CT. 274 of 2013 and directed as under:

*“We, therefore, set aside the impugned order passed by the learned Tribunal on 31st July, 2014 and **direct the said learned Tribunal to decide the issues raised in the original application being O.A. 1104 of 2013 on merits upon granting reasonable opportunity of hearing to the respective parties.***

Since a considerable time has already passed, we direct the learned Tribunal to decide the aforesaid original application without any further delay and positively within a

period of eight weeks from the date of communication of this order.”
(Emphasis Supplied)

12. Since the previous order passed in WP.CT. 274 of 2013 dated 3rd July, 2013 has been considered and this Court has taken a different view by directing the tribunal to decide the matter on merits, as per judicial discipline, the tribunal had no other option but to decide the OA on merits. It was no more open to the tribunal to still bank upon the order passed in WP.CT. 274 of 2013 when after considering the said order, a different direction was issued by another coordinate Bench in WP.CT. 274 of 2013 dated 3rd July, 2013. As a consequence, the impugned order dated 14.05.2015 cannot sustain judicial scrutiny. The same is set aside.
13. OA 1104 of 2013 is restored to its original number. The tribunal shall decide the OA in accordance with the directions issued by this Court in WP.CT. 11 of 2015.
14. Since it is an old matter, the tribunal is requested to decide it expeditiously, preferably within six months.
15. It is made clear that this Court has not expressed any opinion on the merits of the matter.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)