

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:182/2000
DATED THE 5TH DAY OF AUGUST, 2003**

CORAM:HON'BLE SHRI A.S.SANGHVI, MEMBER(J)
HON'BLE SHRI SHANKAR PRASAD, MEMBER(A)

S.D.Gaikwad,
working as Foreign Trade
Development Officer,
on officiating basis in the
office of the Joint Director
General of Foreign Trade Mumbai
and subsequently working as
Section Head in the same Division 33,
2nd Marine Lines, Dhobi Talao,
Mumbai - 400 002. Applicant

By Advocate Shri S.U.Nagar

v/s.

1. Union of India,
through the Secretary,
Ministry of Commerce,
Government of India,
New Delhi - 110 001.
2. The director General of
Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi - 110 001.
3. The Joint Director General of
Foreign Trade,
New C.G.O. Building,
M.K.Marg, Churchgate,
Mumbai - 400 020.

... Applicant

... Respondents

By Advocate Shri R.K.Shetty

(ORAL)(ORDER)

Per Shri A.S.Sanghvi, Member(J)

Heard the learned counsel for both the parties. The applicant has moved this OA claiming remuneration for the period for which he had worked as Foreign Trade Development Officer (FTDO) and also other reliefs of regularisation in the post. According to the applicant vide orders dated 30/7/1996, he was asked to exercise the powers of the post of FTDO w.e.f. 1/8/1996.

He had continued to exercise that power till the date of his retirement i.e. 30/10/2002. His grievance is that he has not been paid the remuneration of the post though he had exercised powers of the higher post.

2. Shri S.U.Nagar, learned counsel appearing for the applicant has at the bar submitted that the applicant is not pressing other reliefs prayed in this OA and he is confining his relief only to the payment of remuneration to him of the post on which he had worked up to the date of his retirement. According to Shri Nagar, learned counsel, the applicant was unilaterally asked to exercise the powers of FTDO and since the post was vacant from 1/8/1996 and the department could not make any arrangement the applicant had agreed to exercise those powers and had been carrying on discharging the duties of higher post till the date of his retirement. He was however not selected nor regularised in that post, but since he has worked in that post he is entitled to the remuneration of that post.

3. Respondents on the other hand have contended that the applicant was working as Section Head in the scale of Rs.5500-9000 and was not promoted as FTDO. The order asking him to exercise the power of FTDO made it clear that he would not be paid any extra remuneration for the work done by him or that he would not be entitled to any seniority, regularisation, confirmation, etc on this post. According to Shri R.K.Shetty, learned counsel for the respondents, the applicant having accepted this order, now cannot turn back and say that he should be paid the remuneration of the post. He has submitted that the applicant had with full knowledge that he would not be

paid the remuneration of the powers exercised of FTDO accepted this proposal and once he had accepted the proposal he cannot now be heard to say that since he had carried out the duties of FTDO, he should be paid the remuneration of the post.

4. We have considered the rival contentions of the parties. The order dated 30/7/1996 directing the applicant to exercise the powers of the post of FTDO w.e.f. 1/8/1996 inter alia provides that Shri S.D.Gaikwad and Shri G.D.Dayal shall neither be entitled to nor shall be claiming any seniority, regularisation, confirmation etc or any other service benefits of whatsoever nature including extra remuneration.

5. Relying on this condition, Shri Shetty learned counsel has submitted that the applicant cannot claim any remuneration as he had accepted that condition.

6. Since no documentary evidence is there on record to suggest that the applicant had accepted this condition and persuant to that acceptance given an undertaking that he would not be claiming any remuneration of this post, it cannot be held that he was bound by that condition, it is an admitted position that the post of FTDO was a promotional post so far as the applicant was concerned and the applicant having been asked to exercise the powers of that post was asked to discharge additional duties and responsibilities. Merely stating that he would not be entitled to extra remuneration of the post without any reason, does not entitle the department or the administration to contend that this being the condition in the order of exercise of the power, he would not be entitled to the remuneration of the said post. In fact, the moment he was asked to exercise the powers of the higher post, it would mean that he was inducted into a different post than the one he was holding and that it

would be a new service so far as he was concerned. Shri Nagar, learned counsel for applicant has relied on a decision in the case of Bachchan Singh Pal V/s. Union of India in OA 294/1986, decided by this Tribunal on 19/6/1987 wherein the Tribunal considering the question of remuneration of the applicant therein, where he was placed in a post carrying higher duties and responsibilities on the condition that he would not be entitled to claim the extra remuneration of that post has observed that the applicants and other officers like them who are exercising powers of the post of Deputy Chief Controller of Imports and Exports for the period during which they are exercising such powers are entitled to claim remuneration of higher post. Incidentally this decision was taken in appeal to the Supreme Court and while rejecting the SLP No.1737/1989 filed by the department, the Supreme Court has observed that the direction given by CAT appears to be reasonable and that the respondents therein having discharged the function of higher post of Deputy Chief Controller was entitled to remuneration for that post.

7. In another matter of a similar nature, in the case of Selvraj v. Lt. Governor of Island Port Blair reported in 1998 II LLJ 1191 the Supreme Court has also observed that when an officer has discharged the functions of the higher post, he is entitled to the remuneration for that post on the principle of quantum ~~merit~~
^{merit}. Therefore, we are of the opinion that the applicant cannot be denied the remuneration of the post on which he is working from 1/8/1996. He is entitled to claim the minimum of the scale of that post. In view of this position, we direct the respondents to pay to the applicant the difference in the salary

:5:

of the post of FTDO ^{and} the remuneration already drawn by him for the period he had worked in that post after due verification. This exercise be carried out within three months of receipt of copy of this order. No cash.

Shankar Prasad

(SHANKAR PRASAD)

MEMBER(A)

A. S. Sanghvi

(A. S. SANGHVI)

MEMBER(J)

abp

Shankar Prasad
to A. S. Sanghvi
on 14-8-2003

Mr. S.D. Gaikwad,
Working as Foreign Trade
Development Officer (Now retired). : Applicant

Advocate:

Versus

1. Union of India, through the
Secretary, Ministry of Commerce,
Govt. of India, New Delhi-110 011.
2. The Director General of Foreign Trade
Udyog Bhavan, New Delhi-110 001.
3. The Joint Director of Foreign Trade,
Near C.G.O. Building M.K.Marg,
Churchgate, Mumbai-400 020. : Respondents.

Decision by Circulation

ORDER
RA.82/2004 in OA.182/2000

Date: 08-10-2004

Hon'ble Mr.A.S.Sanghvi : Member (J)

This review petition is moved by the applicant of the OA.182/2000 for reviewing the orders passed in the OA on dated 5.8.2003. Though the order in the OA was passed on 5.8.2003, this review petition is moved on dated 3.9.2004 without any application for condoning the delay in filing this review. Rule 17 of the CAT (Procedure) Rules, 1985 requires

that review shall be moved within 30 days of passing of the order. Since this review is not moved within 30 days, the same is clearly barred by limitation and deserves to be rejected on this ground.

2. On merit also, we find that the review does not seek the review of the order but rather seeks to challenge the order passed in the OA. We are not exercising appellant jurisdiction over our orders and therefore, such an attempt on the part of the applicant to challenge our own order before us in the guise of the review application cannot be sustained. The review application therefore, deserves to be rejected. The same is rejected with no order as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

A.S. Sanghvi
(A.S. Sanghvi)
Member (J)

ab
Issued
on 19/10/04
(c) /