

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1093 of 1998.

Dated this Friday, the 24th day of November, 2000.

CORAM : Hon'ble Shri B.S. Jai Parameshwar, Member (J).

A. K. Naik,  
Resident of - Gavdevi Complex  
Kripa-A/5, Sant Namdar Path,  
Jejai Nagar,  
Dombivli (E), Dist. Thane,  
Pin - 421 205.

... Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. The Chief Commissioner of Customs,  
New Customs House,  
Ballard Estate,  
Mumbai - 400 038 representing  
the Union of India.

2. The Assistant Commissioner of  
Customs (Personal & Estt. Dept.),  
New Customs House,  
Ballard Estate,  
Mumbai - 400 038.

3. The Pay & Accounts Officer,  
New Customs House,  
Ballard Estate,  
Mumbai - 400 038.

... Respondents.

(By Advocate Shri V. D. Vadhavkar for  
Shri M. I. Sethna).

OPEN COURT ORDER

PER : Shri B. S. Jai Parameshwar, Member (J).

Heard Shri P.A. Prabhakaran, the Learned Counsel for the applicant and Shri V. D. Vadhavkar for Shri M. I. Sethna, the Learned Counsel for the Respondents on O.A. as well as M.P. No. 240/2000. The M.P. is allowed. The O.M. dated 16.12.1993 is also taken on record.



2. The applicant herein retired as Canteen Manager w.e.f. 30.04.1998 on attaining the age of superannuation. He submits that he has served the canteen for a period of 37 years 10 months and 14 days from 16.06.1960 to 30.04.1998. However, he was paid gratuity considering his qualifying service from 01.10.1991 to 30.04.1998.

3. Being aggrieved, the applicant has filed this application for the following reliefs :

"(a) The respondents be directed to reckon the total service of the applicant in the Canteen as per certificate in Exhibit-A.1 for the purpose of calculation of Gratuity.

(b) The respondent be directed to pay this difference with interest @ 18% within a determined time frame."

4. The respondents have filed a reply. They submit that the applicant retired from service as Canteen Manager w.e.f. 30.04.1998. They submit that there are no records to show that the applicant was appointed earlier to that. In order to consider as to when the applicant was appointed on regular basis, they relied upon the O.M. dated 22.08.1995 which states as under :-

"All canteen employees who were working on regular basis (other than those appointed on ad-hoc/casual basis) prior to 01.10.1991 shall be deemed to be appointed on regular basis w.e.f. 01.10.1991 in their respective grades."

5. Relying upon the said provisions, the respondents submit that the gratuity has been calculated in accordance with the rules and applicant has not produced anything to show that he has been appointed regularly earlier to 01.10.1991. The applicant has produced the certificate (Annexure A-1 page 9 to the O.A.)

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issued by the Assistant Commissioner of Customs, Personnel & Establishment Department, Mumbai, to contend that he has put in 37 years 10 months and 14 days. Relying upon the O.M. dated 22.08.1995 the respondents were not justifying in coming to the conclusion that applicant was appointed only on regular basis w.e.f. 01.10.1991. The respondents should have ascertained whether the department has maintained the service register of the applicant for those long years and whether any material is available with them to show that the applicant was appointed on regular basis beyond a date other than 01.10.1991. The respondents in their reply have not stated anything about the certificate issued by the Assistant Commissioner of Customs, Personnel & Establishment Deptt., Mumbai. It is not their case that this certificate is issued by an authority who is <sup>not</sup> competent to do so. The Learned Counsel for the respondents submits that the same authority has filed the reply and that it was not possible for them to lay hands on the papers on which date the applicant was appointed on regular basis. It is strange that an authority who issued the certificate to the applicant stating that he has served the department for nearly 37 years 10 months 14 days to state before this Tribunal that he has taken the deemed date of regularisation as contemplated in O.M. dated 22.08.1995. Further, they submit that there was no practice to give confirmation to any canteen employee prior to 05.09.1976, since it was a co-operative canteen. Assuming for a moment that there was no practice of confirmation of the canteen employee prior to 05.09.1976, as the canteen was a departmental canteen, the respondents cannot deny that applicant was appointed in the canteen prior to 05.09.1976. If atleast that date (i.e. 05.09.1976) is taken into consideration, the applicant could have

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obtained more gratuity having regard to the qualifying service from 05.09.1976. The applicant has submitted that he has served the canteen for 37 years 10 months and 14 days. The respondent authorities should have considered the case of the applicant in <sup>proper</sup> ~~appropriate~~ prospective. They should not have driven the applicant to approach this Tribunal.

6. It is not as if the respondents are not able to lay hands on the service particulars of the applicant. Further, they should have called upon the applicant to furnish any material available in his possession to consider on what date he was regularly appointed. Instead of doing any of these things, they relied upon the O.M. dated 22.08.1995 and took decision that the applicant was deemed to have been regularly appointed on 01.10.1991. This action on the part of the respondents, I feel, is not proper.

7. Therefore, the calculation of gratuity payable to the applicant has not been done properly. The respondent authorities have not taken into consideration the qualifying service the applicant has put in. The respondent authorities are at liberty to ascertain from the canteen authorities the <sup>service</sup> particulars of the applicant and take a proper decision.

8. Considering all these facts, I am of the opinion that the calculation of gratuity from 01.10.1991 is not in accordance with the rules.

9. The respondents may contact the canteen authorities and ascertain the date of regular appointment of the applicant and accordingly pay him the gratuity in accordance with <sup>the</sup> rules.

10. The applicant may, if he is in possession of any document to show that he has been regularly appointed earlier to 01.10.1991, he may supply the same to the respondent authorities.

11. Hence, the following directions are given :

(a) The respondents shall calculate the qualifying service of the applicant for the purpose of payment of gratuity after ascertaining from the canteen authorities the actual and regular date of appointment of the applicant. The applicant may also furnish necessary particulars in that connection. Further, the respondents may take note of the certificate dated 30.04.1998 issued by the Assistant Commissioner of Customs, Personnel & Establishment Department, Mumbai. They may ascertain the particulars from the <sup>Asst</sup> Officer if he is still in service and take an appropriate decision.

(b) After taking a decision as regards regular date of appointment of the applicant, the respondents shall consider and pay the gratuity in accordance with the rules.

(c) The respondents may also take note of the decision in O.A. No. 572/96 decided on 03.12.1999 on the file of the Principal Bench.

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(d) Time for compliance <sup>is</sup> within two months from the date of receipt of a copy of this order.

12. With the above observations, the D.A. is disposed of. No order as to costs.



24.11.00. (B.S. JAI PARAMESHWAR)  
MEMBER (J).

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