

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.81/2003 in OA.NO.16/98

Dated this the 20<sup>th</sup> day of Feb 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri Muzaffar Husain, Member (J)

Iqbal Hassan Patel  
Working as Launch Mechanic,  
Customs Division,  
Ratnagiri.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Shri S.Datta Mujumdar,  
(Commissioner),  
Collector of Customs,  
Customs Collectorate,  
Customs Building,  
Hira Baug, Tilak Road,  
Pune.
2. Shri S.D.Pradhan,  
Dy.Commissioner of Customs,  
ICE House, 41 Sassoon Road,  
Pune.
3. I.H.Khan,  
Asst. Collector of Customs  
& Central Excise,  
Jail Road, Ratnagiri.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This Contempt Petition has been filed by the petitioner Iqbal Hassan Patel alleging non implementation of the order given by this Tribunal in his favour on 7.3.2002. By this order the Tribunal had directed that the applicant should be paid the salary and scale of the post on which he was working along with the arrears etc. from 1.12.1996. The order of the Tribunal was delivered on 7.3.2002 and the Contempt Petition has been filed on 27.7.2003.

2. The respondents in their reply have stated that a Writ Petition has been filed in the Bombay High Court on 3.10.2002 challenging the order dated 7.3.2002 of the Tribunal. Although, the Writ Petition has not yet come up for hearing and no stay has been granted by the High Court, the respondents have in their reply cited a judgement of the Apex Court wherein more or less in a similar case it has been held that the Tribunal should have proceeded slowly against the Contemners. The respondents therefore requested for a period of three months to get orders from the High Court so that further action could be taken accordingly. When the case came up before the Tribunal after a period of three months, the respondents further sought additional time. On 12.11.2003 the respondents were granted another 12 weeks' time.

..3/-

3. The learned counsel for petitioner mentioned that even after a number of adjournments given again and again, the order of CAT has not been implemented so far. He further said that the order of Tribunal is essentially based on a judgement of the Supreme Court holding that a person is entitled for the salary of the higher post if he has been working there. The law laid down by the Apex Court in this case, namely, Jaswant Singh vs. Punjab Poultry Field Staff Association & Ors. has not been challenged. The demand of the petitioner is for the payment of difference in the salary actually drawn by him and the salary for post on which he was working for a certain period.

4. Continuing his arguments, learned counsel mentioned that even in the judgement of the Supreme Court cited by the respondents, it has been held by the Court that "at any rate, CAT should have directed the appellant to implement the direction in the absence of the said order from the High Court within a time frame fixed by it and then consider whether the action should be taken in the event of non implementation of the order after expiry of the said time frame".

5. We consider this as a fit case for giving a direction as envisaged in the judgement of the Apex Court cited by the respondents. We, therefore, direct the respondents to implement the CAT order dated 7.3.2002 and to pay the salary difference to the applicant as ordered. However, if considered necessary, a personal guarantee from the applicant can be obtained that in case the verdict of the High Court goes against him, the amount would be recoverable either from his salary or from terminal benefits.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

mrj.