

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.16/98

Thursday this the 7th day of March, 2002.

CORAM : Hon'ble Shri Gopal Singh, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

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

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India  
through Collector,  
Customs & Central Excise,  
P.M.C.Commercial Bldg.,  
Hira Baug, Tilak Road,  
Pune.

2. Assistant Collector of  
Customs & Central Excise,  
Jail Road, Ratnagiri.

...Respondents

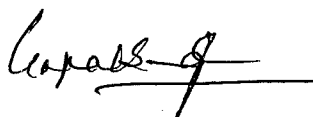
By Advocate Shri V.D.Vadhavkar  
for Shri M.I.Sethna

O R D E R (ORAL)

{Per : Shri Gopal Singh, Member (A)}

In this application under Section 19 of the Administrative Tribunals Act, 1985 applicant Iqbal Hassan Patel has prayed for a declaration that the applicant is entitled to full salary for the period from 23.6.1981 to 14.2.1993 as Engine Driver and from 15.2.1983 till date as Engineer's Mate.. He has

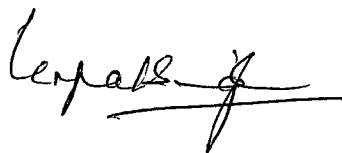
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also prayed for a direction to the respondents to fix the pay of the applicant in the respective grades and posts in which the applicant has worked by treating the period as if the applicant has been promoted in the respective higher scales and pay to the applicant the arrears in this behalf with 18% interest.

2. The applicant's case is that he was initially appointed on 19.10.1977 as a Greaser Grade I. His services were utilised as Engine Driver w.e.f. 23.6.1981 to 14.2.1993 in the pay scale of Rs.380-560. However, he was paid the salary of Greaser Grade I. The applicant was promoted as Launch Mechanic in the scale of rs.1200-1800 vide order dated 8.2.1993 (Exhibit-'C'). He has recently been promoted as Engine Driver w.e.f. 30.7.1999. The contention of the applicant is that though his services were utilised on the post of Engine Driver and Engineer's Mate, he is all along been paying the salary of Greaser Grade-I and therefore he prayed that he should be paid the salary of the post on which he worked and for the period he worked on the said post. The applicant has also annexed a statement showing his engagements as Engine Driver and Engineer's Mate during 1981 - 30.1.1987 duly verified by a Departmental Officer at Exhibit-'D'.

3. Learned counsel for the applicant has also cited a judgement of the Hon'ble the Supreme Court in Jaswant Singh vs. Punjab Poultry Field Staff Association & Ors. - 2002 SCC (L&S) 116 in support of his contention.



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4. In the counter, the case of the applicant has been denied by the respondents. They have attacked the application on the ground of limitation also. It is the contention of the respondents that the case pertains to the period from 1981 when this Tribunal was not in existence and as such the applicant cannot agitate this matter before the Tribunal. It is pointed out by the respondents that there is no application for condonation of delay. The matter pertains to the year 1981 to 1993 but this OA. has been filed in the year 1997 and therefore this application is barred by limitation. It is also the case of the respondents that the applicant was engaged on various jobs like Engine Driver, Engineer's Mate as part of his training to equip<sup>h</sup> himself to face the competition for selection to the next higher post. In fact, he continued to be holding his substantive post of Greaser Gr.I and therefore he is not entitled to pay of the higher post. It has, therefore, been averred by the respondents that this application is devoid of any merit and is liable to be dismissed.

5. We have heard the learned counsel for the parties and also perused the record of the case.

6. In *Jaswant Singh vs. Punjab Poultry Field Staff Association & Ors.* - 2002 SCC (L&S) 116, it has been held by the Hon'ble the Supreme Court that a person not qualified for promotion to a post but discharging duties of the said post was

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entitled to pay and allowances admissible on that post. It has, however, been held that such a person however would not be entitled to promotion on that post. Exhibit-'D' placed at page 13 shows engagements of the applicant on the post of Engine Driver and Engineer's Mate for various periods. This statement is signed by Assistant Commissioner of Customs Division, Ratnagiri. The learned counsel for the respondents submits that this statement is not signed by the competent authority. However, the fact remains that the applicant was engaged on the post of Engine Driver and Engineer's Mate during the period shown in the statement and in terms of Supreme Court judgement cited supra, the applicant would be entitled to wages of the post for the period he worked on that post. The applicant is claiming relief for the higher pay for the period from 1981 onwards. This application has been filed in December, 1997. Though we are of the view that the applicant is entitled for the salary of the post for which his services were utilised, he would, however, be entitled to difference of salary from a period one year before filing of this OA. Accordingly, we pass the order as under :-

The OA. is allowed. The applicant will be entitled to salary of the post on which he worked and for the period he worked on that post. He would only be entitled to difference of salary from 1.12.1996, i.e. one year prior to the date of filing of this OA. This order is to be complied with within a period of four months from the date of receipt of a copy of this order. No costs.

*S.L. Jain*  
 (S.L. JAIN)  
 MEMBER (J)

*Gopal Singh*  
 (GOPAL SINGH)  
 MEMBER (A)

mrj.

*27/3/02*  
 Order/Judgement despatched  
 to Applicant/Respondent (s)  
 on 27/3/02  
*W*

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.

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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.

(10) O.A.No.16/1998 dated 4.8.2004

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C.P.No.81/2003

Shri G.S.Walia, learned counsel for the applicant/Petitioner.

2. Shri V.S. Masurkar, learned counsel for the respondents.

3. Learned counsel for the Petitioner in C.P. stated that despite the specific direction by the Tribunal in the order dated 20.2.2004 for the payment of salary difference of the applicant in compliance as per the order of this Tribunal dated 7.3.2002 it has not been done. It was also mentioned in the order dated 20.2.2002 on C.P. No.81/2003 that if considered necessary, a personal guarantee from the applicant can be obtained. The learned counsel has pointed out that now the High Court by its order dated 8.6.2004 has dismissed the Writ Petition filed by the respondents. Therefore need for such personal guarantee will not arise.

4. Learned counsel for the respondents Shri V.S.Masurkar stated that he had no intimation that the case is listed on board for hearing the C.P. today.

5. On going through the records, it is evident that this CP has been listed today on a special mention made by the learned counsel for the applicant by way of "Urgent Circulation" on 20.7.2004.

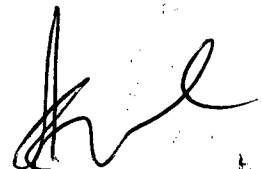
6. The learned counsel for the respondents sought for and is granted 3 weeks' time to file reply regarding the action taken by the respondents for complying with the orders of the Tribunal dated 7.3.2002 and 20.2.2004 in view of the dismissal of the Writ Petition filed by them.

List the C.P. on 30.8.2004.

"DASTI"



(S.G.Deshmukh)  
Member (J)



(A.K.Agarwal)  
Vice Chairman

sj\*

*e/s (see)*