

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1429/2003

New Delhi, this the ^{16th} day of February, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Amir Ali S/o Sh. Sayad Shoyab Ali,
Working as casual labourer conferred with
temporary status in the Office of Commissioner,
Customs & Central Excise, Gaziabad,
R/o H. No.321 Bakeri Mohalla, Lal Kurti
Meerut Cantt

..... Applicant

(By Advocate : Shri V.P.S. Tyagi)

V e r s u s

- 1.. Union of India (Through Secretary)
Ministry of Finance, Deptt of Revenue,
Central Board of Excise and Customs,
New Delhi
- 2.. The Chief Commissioner,
Customs & Central Excise Commissionerate,
Mangal Pandey Nagar,
Meerut - 1.
- 3.. The Commissioner, Customs & Central Excise,
Income Tax Building Kamla Nehru Building,
Ghaziabad,
- 4.. Additional Commissioner (P&V),
Central Excise, Meerut-I
- 5.. The Additional Commissioner(P&V),
Central Excise, Noida

..... Respondents

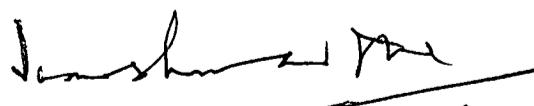
(By Advocate : Shri R.N. Singh, proxy for
Shri R.V. Sinha)

O R D E R

The applicant has approached this Tribunal vide this
OA seeking directions being issued to the respondents to
execute the orders of the Tribunal passed in CP No.282/2002
in OA 544/1999 on 9.10.2000. It is observed that the
respondents, in compliance with the directions of the
Tribunal, as referred to above, issued a letter on the 24th
July, 2002 directing the Additional Commissioner (P&V),

Central Excise, Noida (respondent No.5) to release the payment to the applicant as per the directions of the Tribunal in the said CP/OA and the same being intimated to the Customs and Central Excise Commissionerate, Meerut-I for onward transmission to the National Commission for Minorities, New Delhi. However, the applicant has reported that the said orders of the Tribunal and the consequent orders of the respondent No.2 are yet to be implemented by respondent No.5.

2. On perusal of the counter affidavit filed by the respondents, it is observed that, in compliance with the orders of the Tribunal dated 9.10.2000, a cheque dated 28.7.2003 for an amount of Rs.6,120/- was offered to the applicant, but he refused to receive the same, stating that he would receive the same through the Court or Government Counsel. The respondents have also clarified that while arriving at the said amount of Rs.6,120/-, calculation of salary was made for the period from 13.2.2000 to 12.9.2000, i.e., for 144 working days, excluding Government holidays at the rate of Rs.42.50 per day, at the rate of wages for casual labour applicable at that time. The respondents have submitted that the delay in making the payment was caused due to the respondents having preferred an appeal in the Hon'ble High Court in March, 2001 against the orders of the Tribunal dated 9.10.2000 in CP 282/2000 in OA No.554/1999, which was dismissed vide orders of the Hon'ble High Court dated 11.4.2001. It appears that they did consider the question of further appeal against the dismissal of the Writ Petition by the Hon'ble High Court and it was only after they were advised not to go in for appeal that they issued



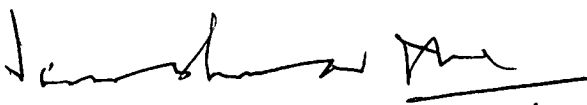
the letter of the 24th July, 2003, directing the respondent No.5 to make the payment of wages to the applicant as per the directions of the Tribunal.

3. I find that the applicant has also filed a rejoinder to the counter reply of the respondents and has alleged that the payment proposed by the respondents at the rate of Rs.42.50 per day for 144 days in 7 months is arbitrary. According to him, he is entitled for 7 months' salary at the rate of monthly emoluments inclusive of DA, HRA etc as per DOP&T Scheme with 18% interest. The applicant has contended that the orders of the Tribunal regarding payment of 7 months' salary were specific and the same envisaged payment of the amount within 4 weeks from the date of receipt of a copy of the order.

4. On perusal of the order of the Tribunal in CP 282/2000 in OA 554/1999 (Annexure A-4), it is observed that this aspect of the matter whether the applicant has to be paid at the rate of monthly emolument including DA, HRA etc. had not been specified. The relevant portion of the order of the Tribunal reads as follows:-

".....we direct the respondents to pay the salary of seven months of casual labour within a period of 4 weeks from the date of the receipt of a copy of this order."

5. Under these circumstances, it is inferred that the respondents have paid 7 months' salary to the applicant after calculating the same at the rate of Rs.42.50 per day as a casual labourer during the period in question. It was not correct on the part of the applicant to have refused to



15

receive the amount or to say that he would be receiving the amount only through the Court or Government Counsel. In fact, the learned counsel for the respondents did vehemently point out that it was not the procedure to receive payment at the Court or through the Government Counsel nor was it envisaged in the order. It is, therefore, highly objectionable on the part of the applicant to have refused the payment proposed to be made to him though a Cheque.


6. The respondents have referred to the decision of the Jodhpur Bench of this Tribunal in Jai Singh Rathore vs. Union of India and Anr. (AISLJ IV 2001 (1) 322) decided on 3.8.2000 in which, among other things, it has been observed that Section 19 (4) forbids any further action in the matter once the application has been filed in the case. There is also a reference to another case in Civil Appeal No. 4264/2000 (Arising out of SLP (C) No. 4367/1999) in Government (N.C.T. of Delhi) & Anr. v. Nitika Garg & Anr in which, among other things, the Court held that the observations made by the Tribunal while dismissing the application regarding those who were not registered in Employment Exchange will be of no consequence and would not confer any right. The case of the applicant was, however, directed to be reconsidered by the Hon'ble Supreme Court. Reference to these decisions have been made by the learned counsel for official respondents to make a point that the orders given by the Tribunal in the CP subsequent to the disposal of the OA were, in the light of the decisions as referred to hereinabove, in the nature of observations and not directions. This aspect of the matter is, however, at this stage, not considered relevant. What...



: 5 :

is important is that the respondents have complied with the orders of the Tribunal given in CP, as mentioned above, and the said facts should have been accepted by the applicant. If he still had any grievance, it was open to him to proceed in the matter as per law.

7. Having considered the submissions of both the sides and keeping in view the fact that the respondents have complied with the orders of the Tribunal as given in the CP, I do not find it proper on the part of the applicant to have refused to receive payment on whatever ground. The applicant must appreciate the fact that there was no mention in the order as to the rate at which he had to be paid salary for seven months. What is relevant is the fact that the Tribunal had directed the respondents to pay the salary of seven months of casual labour and that the same had been offered to the applicant as per the calculation of the respondents. It will be for the applicant to receive the payment as offered by the respondents in terms of the directions of the Tribunal and if he finds that his grievance still survives, it will be open to him to proceed in the matter, if so advised, as per law. The respondents are accordingly directed to offer the payment to the applicant, as done earlier, again within a period of one month from the date of receipt of a copy of this Order. With this the OA stands disposed of.


(SARWESHWAR JHA)
MEMBER (A)

/pkr/