

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-544 of 2013

Ali Zahir Jafri Petitioner

Versus

Chairman Federal Board of
Revenue & another Respondents

Dates of hearing: 13.03.2018 and 29.03.2018

Syed Jawad Hyder Rizvi, Advocate for the Petitioner.
Mr. Kafeel Ahmed Abbasi, Advocate for Respondent No.1.
Sheikh Liaquat Hussain, Assistant Attorney General.

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J U D G M E N T

ADNAN-UL-KARIM MEMON, J: The Petitioner has prayed for the following relief(s).

- a) ***Direct the FBR to provide the copies of the payment order/ sanction order wherein reward has been paid by the FBR as their statement given before the Hon'ble FTO. Related para 13 of the dissension dated 27.10.2006 in complaint No. 635/2000 is already annexed at "G" of the petition.***
- b) ***Direct the Respondents to give one step promotion as recommended in the case No. SI/ Misc/400/95, to the petitioner.***

- c) ***To declare that the petitioner is entitled for receiving the reward money in accordance with the recommendation of different Collectorates and units of the FBR from time to time which has not been paid to him, so far.***
- d) ***Further direction be issued to the respondents to make payment of all such amounts of rewards for which the petitioner is entitled as per law along with other incidental benefits for the unnecessary delay caused by the respondents.***
- e) ***That the cost of this petition along with the costs incurred on the litigation to which the petitioner was compelled to initiate due to such illegal, wrongful, arbitrarily and unconstitutional act of the respondents to deprive the petitioner of his due rights.***

2. Brief facts of the case as per averments of the parties are that the Petitioner was appointed as an Appraiser in the year 1972 in Pakistan Customs, Government of Pakistan. As per the Government of Pakistan Notification No. SRO 603(1)/73 dated 24.04.1973 rewards to officers, staff and the informers were granted in accordance with the prescribed slabs of recovery of evaded taxes, which as envisages the following 2 types of Rewards:-

- a) ***First type of reward falls under Rule 1 to 4 of the section 9 of the said SRO sanctioned by the respective collectors on the basis of performance.***
- b) ***Special rewards falling under rule 13 of the SRO were sanctioned by the Federal Board of Revenue on the recommendations of the Collectors for the services mentioned under this rule and the reward can be claimed both under rule 1 to 4 and rule 13 as clarified by the Central Board of Revenue, now***

FBR, vide their letter CNO. 7/24/AS 2004 dated 19th June 2004, para (C) thereof is referred.

The Petitioner has averred that he received 85 rewards under para-9 of the SRO 603(1)/73 sanctioned by respective Collectors of Appraisalment, Preventive and Air Freight Unit during the period of 1973 to 1998 for detection of evasion of duty in these cases. The Petitioner has further averred that apart from the above 85 reward cases, the respective Collectors further recommended rewards in 18 cases under para-13 of SRO 603(1)/73; but the reward was sanctioned by the FBR in one case only bearing No. SI/Misc/408/94 and reward in 17 cases has not been granted to him without disclosing any reason thereof despite the reminders sent by the Petitioners. The FBR vide their letter dated 26.5.2004 called fresh recommendations from the Collectorate of Appraisalment in these remaining cases. The Collectorate of Appraisalment vide their letter No. Misc/01/2002 dated 14.09.2004 to FBR replied as under:-

“Recommendations for sanction of reward to Syed Ali Zahir Jafri Principal Appraiser was made to the Board by the then Collector Appraisalment has already been forwarded to the Board by this Collectorate vide letter of even number dated 11.12.2003, the recommendation of the predecessor collector cannot be reviewed afresh by the succeeding Collector at this stage”

The Petitioner has contended that when the FBR failed to take any action upon subsequent recommendation, he was compelled to file Complaint No. 635-K/2006 before the learned Federal Tax Ombudsman (FTO) against the FBR in year 2006; but, the FTO after hearing the parties rejected the Petitioner's

complaint vide order dated 27.10.2006 with the following observations:-

- 1) ***Firstly that CBR now FBR has already granted reward in 11 cases.***
- 2) ***The matter of grant of rewards falls under the prerogative powers of the FBR.***
- 3) ***The finding in the decision is based on an incomplete report by the Collector of Customs (refer Para-12 of the findings/ decision dated 27.10.2006 at page-5).***

The Petitioner being aggrieved by and dissatisfied with the FTO order dated 27.10.2006 in Complaint No. 635-K/2006, filed a Review Application No. 99/2006 before him; the Petitioner further contended that when the FBR did not provide him copies of 11 sanction reward orders allegedly issued by it, a fresh Complaint No. 102-K/2010 was filed before the learned FTO praying therein for directions to the FBR to provide him copies of 11 sanction orders and disclose the reason for not sanctioning the reward in the remaining cases. The Petitioner has narrated that his complaint was entertained by the learned FTO, who vide order dated 04.03.2010 directed the FBR to provide copies of all the recommendation letters of Collector of Customs to the Petitioner within 10 days and decide the remaining cases of the Petitioner on merits. The FBR being aggrieved by and dissatisfied with the order dated 4.3.2010 passed by the learned FTO, filed a Review Application No. 37/2010 before FTO, who passed the order dated 5.7.2011, contents whereof are reproduced below:

“The Review Application having become infructuous and being not pressed by the Department is consigned to record”.

The Petitioner being aggrieved by and dissatisfied with the order dated 5.7.2011 passed by the learned FTO preferred Appeal before the President of Pakistan; but no decision thereon was communicated to the Petitioner; hence, he filed the instant Petition on 6.2.2013.

3. Upon notice, the Respondents filed para--wise comments.

4. Syed Jawad Hyder Rizvi, learned Counsel for the Petitioner at the very outset does not press prayer clauses b to e of the instant Petition. He contended that it is absolutely incorrect that the Petitioner was granted reward by the FBR in 11 cases; that matter of reward falls under the powers of the FBR; that the order of reward published in a Gazette Notification No. SRO 603(I)/73 dated 24.04.1973 does not specify the grant of reward in accordance with the prerogative power of FBR, because there is a difference between Award and Reward; that reward is remuneration paid against some particulars services rendered by a person as envisaged under para-13 of the Reward Rules and is like salary, whereas award is not given against any service. Moreover, when an order of Government is published in the Gazette, it cannot be left at the whims and wishes of the officials; that this is a basic duty of all the Collectors to act fairly, justly and honestly; but, in the present case ignoring recommendations of many

Collectors for the grant of reward to the Petitioner without assigning any reason is violation of Section 24-A of the General Clauses Act; that it is discriminating that for recovery of few lacs, many officers have been given reward equal to 2 years' salary by the CBR/now FBR; whereas, the Petitioner, who rendered services under reward rules and remained instrumental in recovery of crores of rupees, has been ignored and denied benefit of the reward with mala fide intention to discourage the detection of evasion of duties, taxes and encourage the tax evaders in their activities; that the learned FTO vide order dated 5.7.2011 erred in holding that the complaint became infructuous and consigned it to record ; that the Petitioner being aggrieved by and dissatisfied with the order dated 5.7.2011 passed by the learned FTO preferred Appeal before the President of Pakistan but no order has been communicated to the Petitioner by the President of Pakistan on the Appeal; as such, the Petitioner having no option but to approach this Court for redressal of his grievances; that the findings of the learned FTO in its original order dated 27.10.2006 are defective and not sustainable in law; that claim of the Petitioner is genuine and within the parameters of SRO 603(I)/73 dated 24.04.73; that the Respondent- FBR is bound under the law to implement the recommendation of the Competent Authority in Collectorate of Customs to grant the benefits of the award to the Petitioner even after his retirement from the service. Having argued his case, the Counsel for the Petitioner prayed for allowing the instant Petition.

5. Mr. Kafeel Ahmed Abbasi, learned Counsel for the Respondent referred to the statement dated 13.03.2018 filed on behalf of the Respondents and argued that the case of the Petitioner was considered by the Deputy Collector, Establishment, Government of Pakistan, Model Custom Collectorate (Appraisement), Custom House Karachi, who vide order dated 21.4.2011 rejected the Petitioner's claim on merits. He next contended that the Petitioner is not entitled under para 9 (ii) and 13 of the Reward Rules, 1973 vide SRO No. 603(1) / 73 dated 24.04.1973, as the aforesaid rules are based on overall performance and not on case by detection. He next added that the case of the Petitioner had already been finalized and no further action is required on the part of the Respondents. He further argued that the Petitioner has not impugned the order dated 21.04.2011 before any competent forum as provided under the law; therefore, he could not file the instant petition for grant of award under SRO No. 603(1)/73 dated 24.04.1973. He lastly prayed for dismissal of the instant Petition.

6. Shaikh Liaquat Hussain, Assistant Attorney General has adopted the arguments of Mr. Kafeel Ahmed Abbasi Advocate and has prayed for dismissal of the instant Petition.

7. We have heard the learned counsels for the parties and perused the material available on record.

8. This matter has been remanded by the Hon'ble Supreme Court of Pakistan vide order dated 13.12.2017 in Civil Petition No. 12-K of 2017, which reads as under:-

“Both the learned counsel, concede that the matter was wrongly remanded by the High Court to the Service Tribunal as the matter was not related to terms and conditions of service. In the circumstances, the impugned judgment is set aside. The matter shall be again taken up by the High Court in Constitutional Petition No. D-544/2013. Let the High Court record of C.P. Nos. 40/2001 & 69/2002 be also clubbed with C.P. No. D-544/2013. The petition is disposed of in terms noted above. As the claim of the petitioner is very old, we are sanguine that the learned High Court will decide the matter within a period of three months from the date of receipt of this order.”

9. The controversy which remains to be resolved is summarized as under:

- i) Whether the petitioner is entitled for grant of award as provided under SRO 603(1) /73 dated 24.04.1973?**
- ii) Whether the claim of the petitioner has rightly been rejected by the Deputy Collector, Establishment, Government of Pakistan, Model Customs Collectorate (Appraisement), Custom House, Karachi vide order dated 21.04.2011?**

10. To appreciate the controversy in proper perspective, we consider it appropriate to have a glance over the para 9 (ii) and 13 of the Reward Rules 1973, reproduced as under:-

“Notwithstanding anything contained in these rules, the Central Board of Revenue may sanction special rewards to the officers and the members of the staff of the Customs Department, working in the Central Board of Revenue or any of the Departments or subordinate offices under its control, who render meritorious services. The

expression ‘meritorious services’ shall include an outstanding performance in one or more of the following spheres namely:

- a. *making original contribution in any field relating to the Customs and displaying extraordinary devotion to duty.***
- b. *exceeding budgetary targets through extraordinary planning and efforts; and***
- c. *displaying exceptional overall results in the detection of evasion of duty and allied taxes and smuggling operations or recovery of arrears.”***

11. This Court vide order dated 13.03.2018 observed that the Petitioner did not press the prayer clause (b), (c), (d) and (e) of the instant petition. Now the only claim of the Petitioner remains to the extent of prayer clause (a) seeking direction to the FBR to provide copies of the payment orders/sanction orders whereby reward has been paid to the Petitioner by the FBR as averred by them before the Hon’ble FTO. Para 13 of the decision dated 27.10.2006 in Complaint No. 635/2000, being relevant, has been annexed as Annexure “G” to the petition.

12. Mr. Kafeel Ahmed Abbasi, learned Counsel for the Respondents provided a copy of the statement along with the certain documents to the learned counsel for the Petitioner as desired by him, as such the grievance of the Petitioner to the extent of the prayer clause (a) stood redressed.

13. We have noted that the case of the Petitioner on merits is also not tenable under the law as his claim for reward has been rejected by the Deputy Collector (Establishment) vide order dated 21.04.2011, an excerpt of which is reproduced herein below:-

3. ***The claim of the Complainant that as per recommendation of the Collectorate vide letter dated 04.08.1994 he was entitled to Special Reward in each case is not tenable as the Collectorate has recommended Special Reward under Rule 13, based on "overall" performance and not on case by detections. Therefore, these rewards were given for a certain period of time, within which individual instances are only quoted by the recommending authority to strengthen the case of the recommended officer. By practice these rewards have been compensatory in nature. The Board compensated the recommended officer by articulating the reward through spreading over many individual cases in the relevant period or by giving lump sum amount for cases, reward was not given if the recommended officer had been compensated by reward in rewards. There is no set formula for sanction of reward under para-9 and 13 of the Customs Rewards Rules, 1973. Further, the recommendations of a Collectorate are not binding on the Board and the Board may or may not follow the recommendations of the Collectorate.***

The Collectorate's recommendation letter No. SI/Misc. / 408/94 dated 08.04.1994 enclosed the following 13 cases, for collective decision by the Board. The Board vide Order No. 7/13-AS/94 dated 20.10.1994 has taken action on the recommendations of the Collectorate and sanctioned 18 months lump sum salary to the 04 officers including Complainant of the Appraisal Collectorate for showing rare sense of duty in recovering outstanding arrears of not mentioned anywhere that reward of 18 months' salary is for only for one particular case, therefore the contention of the Appellant that reward is to be sanctioned to him in each case is not tenable.

In view of the forgoing, since the instant cases already stood finalized and no further action is

required therefore the claims of reward in following mentioned 13 cases are rejected accordingly:

S.No.	Case No.
01.	SI/Misc/395/93/IX
02.	SI/Misc/283/94/IX
03.	SI/Misc/143/94/IX
04.	SI/Misc/50-D/94/IX
05.	SI/Misc/408/94/IX
06.	SI/Misc/150-E/94/IX
07.	Indus Motors
08.	SI/Misc/150-F/94/IX
09.	SI/Misc/150-G/94/IX
10.	SI/Misc/150-H/94/IX
11.	SI/Misc/908/94/IX
12.	SI/Misc/1632/89/IX
13.	SI/Misc/1632-A/89/IX

The Complainant had made a complaint No. C-635-K/2006 on same issue before Hon'ble FTO, Karachi wherein his appeal was rejected by the Honorable FTO with the following observations:-

“The detection of tax evasion and recovery of tax arrears are the basic responsibility of the employees of a revenue collecting agent. Reward is an ex-gratia payment and cannot be claimed as matter of right. Its sanction is the prerogative of the CBR or officers authorized in this behalf. It has been established that rewards in most of the cases recommended by the Collectors were sanctioned by the CBR and paid to the Complainant who concealed the factual position and approached this office with unclean hands and a false representation. This office takes a very serious view of the non-disclosure of facts by the Complainant and filing of a false and frivolous complaint against the Respondent. The complaint is rejected.

In view of the above, the claim of complainant, Mr. Ali Zaheer Jafri, does not merit consideration and is hereby rejected.

This order mutatis mutandis applied to all the 13 cases mentioned in para-4 of this order.

This issue with the approval of the Collector (A)

**(Dr. Muhammad Nadeem Memon)
Deputy Collector (Establishment)**

14. The record further reveals that the Deputy Collector (Headquarter/Legal) passed an order dated 20.6.2006, para 03 and 04 of which are reproduced below:-

“3. In view of legal factual position detail in preceding paras, the claims filed by the complainant Mr. Ali Zaheer Jafri with regard to the cases bearing No. SI/Misc./400/1995 and No. SI/Misc./ASE/04/0998-AFU does not merit consideration and are thus hereby rejected.”

“4.This issue with the approval of the Collector (P)”

15. We are of the view that this Court in Constitutional Jurisdiction cannot interfere in the findings on facts by a competent forum until and unless there is misreading and non-reading of evidence, perversity, illegality or irregularity in the proceedings. In the instant case, we could not find any such illegality, infirmity or material irregularity in the order dated 21.04.2011 passed by Deputy Collector (Establishment) and Deputy Collector (Headquarter/Legal) vide order dated 20.06.2011.

16. In the light of the findings given by the Competent Authority, we do not find any merit in the instant Petition. Resultantly the captioned Petition is hereby dismissed along with the listed applications.

17. Above are the reasons of our short order of 29.03.2018 whereby we have dismissed the instant Petition along with the listed application(s).

JUDGE

JUDGE