

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.3296/2010**

% **Date of Decision: 14.05.2010**

K. K. NAYYAR PETITIONER
Through Mr. Vivek Singh, Advocate

Versus

NATIONAL BUILDINGS CONSTRUCTION
COROPRATION AND ANR. RESPONDENTS
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The petitioner has come to this Court by way of the present writ petition aggrieved from the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in T.A. No.1301/2009 dated 09.03.2010 whereby the Tribunal has dismissed his T.A. and denied the prayers made by the petitioner
2. The petitioner before the Tribunal had prayed for directing payment of difference of amount of the dues payable to the petitioner towards his wages on the basis of exchange rate of dollars which was prevailing on the date of disbursement of the amount instead of paying

it at the rate which was prevailing when the amount due was calculated and intimated to the petitioner which was denied by the Tribunal.

3. The Tribunal also did not find favour with the second prayer of the petitioner regarding payment of interest which according to the petitioner was paid to him belatedly, i.e., from 1990 to the date of payment, i.e., in 1995 as the petitioner had been drawing periodic advances from the respondent which was adjusted out of the amount payable to the petitioner, yet he was granted interest from 01.09.1993 at the rate of 8% p.a. with directions to the respondents to pay the amount to the petitioner within three months.

4. It is the submission of the learned counsel for the petitioner that he is entitled to payment of the dues in accordance with the exchange rates, i.e., the rate of 1 US\$ equivalent to Rs.33.80/- as it was prevailing on the date of disbursement which was not applied in his case rather his dues has been calculated at the rate of 1US\$ equivalent to Rs.31.40/-. Further he also claimed that there has been delay in making the payment from January, 1990 to September, 1995 and, therefore, for the said period he is also entitled to interest.

5. The respondents have contested the case of the petitioner by submitting that in the present case they had worked out the exchange rate between dollar and Rupee and had sought his option and thereafter paid in Rupee terms to the petitioner. It is pertinent to note that at that time no objection was raised by the petitioner on the grounds of lower exchange rate being adopted by the respondents in making such

payments. As regards the interest, it was submitted that since the petitioner worked up to 19.05.1993 and had received periodic advance from respondents, thus he was entitled to some interest on the belated payment.

6. The Tribunal has considered the submission made on behalf of the petitioner as also the judgments cited by him delivered in the case of W.P.(C).1311/1989 and W.P.(C).3422/1994 wherein a direction was given to calculate the payment in terms of the conversion rate prevailing at the time of payment of wages. The Tribunal while rejecting the submissions made by the petitioner made the following observations:

“We note that in those cases it was belated payment of wages was the issue for which the interest was directed to be paid whereas in the present case it was the option given to the individual and the total amount due to the individual was intimated and at that point of time NBCC worked out exchange rate between Dollar and Rupee; sought for his option and paid in Rupee terms to the Applicant. There was no protest from the Applicant on the grounds of lower exchange rate being adopted by the Respondent-NBCC in making such payments. We also note that authentic exchange rate of May 1993 would have been the right way to pay, after which the interest could have been calculated. The alternative is the exchange rate on the date the NBCC calculated to make payment. Date of payment would be always later than the date of calculating the Dollar Rupee conversion rate. The Counsel for the Respondent submitted that on the date of calculation US\$ exchange rate in Rupee was Rs.31.40 per Dollar which was adopted. Another aspect we note is that the Bonds of July 1995 were issued to the Applicant whereas the exchange rate of September 1995 has been

shown by the Applicant to claim the differential exchange rate for the payments made to him.

7. The Tribunal further observed:

“The Respondents-NBCC, in our considered opinion, have worked out the wages in terms of Rupee, has given the option to the individual, the Applicant on his part also accepted without any protest and he cannot claim now the differential exchange rate. Having accepted the option, he is estopped to raise these types of discrepancies and that too after considerable lapse of time. Further, it is noted that the interest that the Applicant would be getting is much higher i.e. @12.08% whereas the Honble High Court in the referred Writ Petitions have granted only 8% to the petitioners in those Writ Petitions. Thus, we come to the considered conclusion that the Applicant has not established his case on this point.”

8. Insofar as the claim of interest is concerned, the Tribunal has made the following observations:

“10. We now advert to the 2nd issue of interest admissible to him for belated payment. It is not in dispute that the Applicant worked in Iraq for NBCC up to May 1993, and was paid his unpaid salaries in cash and RBI Bonds in September 1995. It is argued by the Counsel that the situation in Iraq has not been conducive in those days. As such, we may assume that NBCC would have taken 3 to 4 months to arrange for settlement of salaries of the Applicant. The Applicants expectation would have been early payment and settlement of his unpaid salaries. Of course, he, without the receipt of the salaries due to him, would have spent anxious times. Ultimately after about 2 years he was paid. This belated payment would surely attract interest. The Applicant urged to get interest from 1990. In the previous paragraphs it is noted that he worked up to 19.5.1993 and had received periodic advance from NBCC. In this backdrop, we decide that he will be entitled to interest from

1st September 1993 (By granting May-August 1993 processing required for the same) to 23.7.1995 (as the RBI Bonds carrying 12.08% interest were issued on 24.7.1995). The simple rate of interest in the said period would be at 8% per annum. The said interest would be payable on Rs.7,12,173/-. Respondent-NBCC is directed to calculate the interest and to pay to the Applicant the same within 3 months from today.”

9. Having given our thoughtful consideration to the submissions made on behalf of the petitioner and the record of the case as filed before us, we find no such irregularity or illegality with the order of the Tribunal so as to entail interference by this Court while exercising powers under Article 226 of the Constitution of India.

10. Accordingly, the writ petition is dismissed with no order as to costs.

11. All the pending applications are also disposed of.

MOOL CHAND GARG, J.

MAY 14, 2010

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ANIL KUMAR, J.