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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.116/89

NEW DELHI THIS THE 20th DAY OF SEPTEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

All India Association of Non-Gazetted
Officers of Ordnance and Clothing
Factories, Inspectorate and Research
and Development Organisation, Central
Executive Headquarters, Vehicle, Factory
Jabalpur, through its General Secretary. ..Applicants
(By Advocate : Shri M.C. Dhingra)

VERSUS

1. Union of India, through
The Secretary to the
Government of India,
Ministry of Defence,
(Dept of Def Production)
Central Secretariat, New Delhi-1.
2. The Director General Ordnance Factories
through Chairman, Ordnance Factory Board,
10-A, Auckland Road,
Calcutta-700 001.
3. The Director General Quality Assurance,
Ministry of Defence
Defence Headquarters,
South Block,
NEW DELHI-110011.
4. The Director,
Tech. Development & Production (Air), Def. HQs
Min of Def., H-Block,
New Delhi.
5. The Controller of Accounts (Fys.)
10-A, Auckland Road, Calcutta.

.... Respondents

(By Advocate : Shri R.M. Bagai)

JUDGEMENT (ORAL)

Shri J.P. Sharma, Member (J)

It appears that the applicant in this case
filed a Writ Petition (Civil) No.984/88 before
the Hon'ble Supreme Court which came for hearing
on 8.12.1988 and it was ordered that the Writ
Petition is allowed to be withdrawn and the petitioner
will be free to approach the Tribunal for the relief
and it is expected that the Tribunal will expedi-
tiously dispose of the matter.

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2. After this order having been passed by the Hon'ble Supreme Court, the applicant filed this application on 13.01.1989 and notice were issued to the respondents.

3. The matter continued for long and the respondents also filed their reply on the grant of interim relief prayed for by the applicant as well as detailed counter to the Original Application.

4. We commenced hearing of this application today and perused the record. The learned counsel for the applicant has taken us to the relief prayed for and also to certain provisions of the Indian Factories Act, 1948. The applicant has alleged itself to be an association of Non-Gazetted Employees ^{factories} working in various Ordnance ^{factories} located all over India in the different States under the Ministry of Defence, Department of Defence Production. The members of non-gazetted Group 'C' called as Workshop staff and recognised as NI. Staff.

5. The applicant has given a long factual statement in Para-6 of the application. The range of covering the whole of the Ordnance Factories of Ministry of Defence in short, Indian Ordnance Factories and the industrial establishment, none of the person who is likely to be affected by the impugned order of January, 1988, has been ^{a party co-applicant} made in this application along with Applicant's Association.

6. When the Query was put to the learned counsel for the applicant that as to how the present application can be decided, as not a single beneficiary have

been impleaded as party which is laid down as a necessary condition for maintainability of the application under Administrative Tribunal Procedure Rule, 1987, Rule 5(b); that said Rules is quoted below :-

"(b) Such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade//categories of persons on whose behalf it has been filed;
**(provided that at least one affected person joins such an application.)"

7. The learned counsel for the applicant wanted time to move a petition for getting an amendment which has been vigorously and emphatically opposed by Shri P.M. Bagai, counsel for the respondents highlighting the fact that the objection has already been taken by the respondents in reply to the prayer for grant of ^{interim} relief that the application in the present form is not maintainable. The learned counsel for the respondents has taken us to the reply filed in M.A.973/91 by them for the grant of the interim relief, pending application. In Para-2 of the reply, which was filed on March, 1992, the respondents have stated that the concerned employee has not been impleaded as party and the facts pertaining to different categories of employees are different and distinct and matter cannot be decided enmasse. We have also considered the justifiability of granting time to the learned counsel for the applicant for amending the Original Application. The procedure as prescribed under Civil Procedure Code is not applicable. The amendment ordinarily should not be refused and has not been

refused even at the Appellate stage however, taking the facts into account the applicant is an Association and there are different categories of employees spread all over India in the various industries establishment or Indian Ordnance Factories. The applicant an Association, cannot by itself unless authorised by the governing body of such an Association could have ground for any relief or for a judicial review. The authority has to be vested in the authorised person of that Association to get a judicial review of a grievance not effectively granted by the Administration. Thus unless there is a duly constituted body at this point of time and there is a resolution of that body, an idea of moving an application without any instruction by the attorney of an applicant, cannot be legitimately accepted.

8. Otherwise also we find that the relief claimed by the Association in this case is squarely for the benefit of its Members. And in that event at least one of the persons who has been deprived of that benefit should have been joined as co-applicant. Though, there is specific rule in this regard. This matter is pending since, 1989 , and the respondents have taken the plea in the year 1992 and since then no step has been taken by the applicant to remove the vital defect in the maintainability of this application. If the applicant itself was not vigilant, the argument of Mr RM Bagai has to prevail. And in these circumstances, we do not find any justification for granting an adjournment to an application for any proposed amendment for

bringing the application under Clause 5(b) of A.T. (Procedure) Rules, 1987.

9. We have also considered the contention of the learned counsel that a claim should not be discarded on technical ground. The law on this subject has been detailed by the Hon'ble Supreme Court in the case of ^{Acqulshin} Collector of land Vs. A. Katiji A.I.R.-1987 SC 1353 and it has been held that any meritorious claim should not be allowed to fall on technical ground. Being aware of this fact that the claim should not be discarded purely on technical ground; we are unable to find any substance in this application to bring it within the ambit of Rule 5(b) of AT Act Procedure Rule, 1987. The maintainability of the application is the sine qua non for the decision on a point when the application itself is not maintainable then the question of technicality does not arise. The prayer for adjournment having been refused, we do not find that we are dismissing this application on technical ground. We are considering this application regarding the maintainability despite the fact that the defect was pointed out earlier by the respondents and the same has not been got rectified either by withdrawing this application taking liberty to file afresh or by taking any other step in aid of bringing this application within the scope of Rule 5(b) of the A.T. Procedure Rule, 1987.

9. At this stage learned counsel for the applicant rightly pointed out that if the merits are not discussed and the relief is not being

adjudicated upon, he may be allowed to withdraw this application to file a fresh one, according to law.

10. We do find that the amendment came for the first time in October, 1988. The aforesaid rule 5(b) of the AT Procedure Rule and this application was filed in January, 1989. The Registry also could not point out this lacuna whereby the application has gone all through these years since 1989. The defect has come to light only when arguments were resumed this defect came to the knowledge of this Bench. In view of this, the application is disposed of as withdrawn with liberty to the applicant to file a fresh one on the same cause of action, if so advised, according to law.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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