

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.98/2020

Dated this Wednesday the 26th day of February, 2020

Coram: R. Vijaykumar, Member (A).

1. M. E. S. Employees' Union,
though its General Secretary
Shri Lalsingh Tharappa Naik,
Age 58 years, C/o AGE: E/M No.1,
Garrison Engineer (NW), Vasco,
Mangoor Hill, Vasco-da-Gama,
Goa-403 802.

Working as Master Craftsman in the
Office of the Garrison Engineer (NW)
Vasco, Goa-403 802.

Contact No.9326138775
R-mail ID: ashoknaik@live.com

2. Rajendra Vasudev Govekar
Age 43 years,
Residing at H. No.333,
Near Green Lawn School,
New Vaddem, Vasco, Goa-403 802.

Working as Electrician (Skilled) in the
Office of the Garrison Engineer, Gomantak,
Vasco, Goa 403 802.

Contact No.9923788925
E-mail ID: rajeshgovekar29@gmail.com

...Applicants.

(By Advocate Shri Anurag Saxena).

Versus

1. Union of India, through its
Secretary to the Government of India,

Ministry of Defence,
South Block,
New Delhi-110 001.

2. Director General (Pers)/EIC,
HQ Military Engineer Services,
Engineer-in-chief's Branch,
Kashmir House, Rajaji Marg,
New Delhi-110 011.
3. Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi Cantt.,
New Delhi-110 010.
4. Principal Controller of Defence Accounts,
Government of India,
Ministry of Defence,
107, Lower Agram Road,
Bengaluru-560 007.
5. Accounts Officer, GE (NW) Vasco,
Shantinagar, Mangoor Hill,
Vasco-da-Gama,
Goa-403 802.
6. Accounts Officer,
GE Project & Gomantak,
Mangoor Hill, Vasco-da-Gama,
Goa-403 802.
7. Accounts Officer, Garrison Engineer,
MES Building, S. V. Road,
Panaji, Goa 403 001.

... Respondents.

(By Advocate Shri R. R. Shetty).

O R D E R (O R A L)

1. When the case was called out, Shri Anurag Saxena, learned counsel appeared for the applicants.
2. Shri R. R. Shetty, learned counsel

appeared for the respondents.

3. This OA has been filed on 27.012020 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8.1 Hon'ble Tribunal may be pleased to call for the records of the case and after examining the same to hold and declare that the impugned order adted 28.10.2019 (Annexure A-1) and 03.12.2019 (Annexure A-2) cannot be sustained in law and therefore, liable to be quashed and set aside, being arbitrary, capricious and illegal.

8.2 Hon'ble Tribunal may be pleased to quash and set-aside the impugned orders dated 28.10.2019 and 03.02.2019 with a direction to Respondents to refund recovery of sum of Rs.5000/- (Rupees five thousand only) and Rs.2500/- (Rupees two thousand and five hundred only) to the serving Industrial Employees and Rs.15,000/- to the retired Industrial Employees i.e. to the applicants with interest @6% recovered from their salary of December, 2019 respectively.

8.3 Hon'ble Tribunal may be pleased to award the cost of the case and to pass further order/s as deems fit and proper in the facts and circumstances of the case."

4. A resolution has also been passed in their Union on 10.01.2020 authorizing the Union to initiate this OA and this OA has been filed by the Union along with representative employees

seeking the above reliefs. The applicants have filed MA No.98/2020 praying therein permission for filing the aforesaid OA jointly. For the reasons given in the MA and keeping in view no objection from the respondents, the MA is allowed.

5. The applicants claim, implicitly although not in specific terms, that they were earlier being provided uniforms prior to 01.01.2016 and that the 7th Pay Commission decided to do away with all uniform related allowances subsumed in a single Dress Allowances. Following its report being accepted by the Government of India, the Department of Expenditure, Ministry of Finance issued an OM No.19051/1/2017-E.IV dated 02.08.2017. These orders prescribed payment of Rs.5000/- to 'other categories of staff who were supplied uniforms and are required to wear them regularly like Trackman, Running Staff of Indian Railways, Staff Car Drivers, MTS, Canteen Staff of Non-Statutory Departmental Canteens, etc.' Following these orders, DoPT issued an OM No.14/4/2015-JCA.2 dated 31.08.2017 approving the grant of

dress allowance at the rate of Rs.5000/- per year to Group 'C' and erstwhile Group 'D' employees of various Ministries and departments including attached and subordinate officers who are supplied uniforms and are required to wear them regularly w.e.f. 01.07.2017. The Garrison Engineer Vasco-da-Gama (NW) referred to this DoPT OM dated 31.08.2017 and decided in a Works Committee Meeting held on 22.05.2018 to grant all industrial persons this Dress Allowance and thereafter, prescribed the nature and colours of such uniforms to be worn by them from 01.07.2018, and also directed in his office order no.71 dated 14.06.2018 to pay this allowance for the year 2018-19 onwards along with salary of such employees. Subsequent to this, the DG (Personnel)/EIC HQ, MES, New Delhi in letter no.B/20943/ LIVE/GEN/EIC(2)/53 dated 22.11.2018 addressed to CGDA states that various items of liveries for summer and winter which were being provided to Group 'C' and erstwhile Group 'D' staff (CMD. Peon, Daftary, Chow, Safaiwala, etc.) of MES had been stopped after issue of DoPT orders dated 31.08.2017 and hence

they were entitled for dress allowance and that the matter had been taken up with the Ministry of Defence, Respondent no.1, and on receipt of the decision, of the orders will be communicated to all concerned. Thereafter, the Ministry of Defence appears to have asked for details of such employees and financial implications of such a proposal for consideration of such sanction including for any additional budgetary provision. Following the letter of 22.11.2018 of Headquarters of DG, DHQ, MES, the CGDA issued the impugned letter dated 28.10.2019 to all his Accounts Offices conveying that the proposals have only been formulated, the concerned staff were not entitled to Dress Allowance in the absence of orders of Ministry of Defence and therefore, he had ordered recovery. He had also noted that, dress allowance had been granted to industrial employees (MTS) during the year 2017-18, 2018-19, 2019-20 although they were not entitled. On this basis, the PCDA Bengaluru issued instructions in (Annexure A-2) dated 03.12.2019 directing recovery from December, 2019 onwards.

6. No decision has yet emerged from the Ministry of Defence and on the basis of of the PCDA letter cited above, the respondents no.5-7 have commenced recovery of Rs.15,000/- paid in excess from the applicants even without issuing any show cause notice in the matter. The learned counsel for the applicants has also brought to notice that similar cases have been filed in different benches of this Tribunal where stay had been ordered on the recoveries ordered to be made from the applicants therein. However, no final orders have been passed by any Tribunal. In the present matter, notice had been issued to the respondents to file reply including on the aspect of Interim Relief claimed. When the case came up for hearing today, the respondents have yet to file their reply. However, after hearing both the learned counsels for the parties, it is admitted by the respondents that they have not issued any show cause notice prior to order of recovery. This was clearly a violation of the principles of natural justice since an opportunity had to be given to the applicants to be heard on the matter before the peremptory

recovery was made. This would also provide an opportunity to the applicants to explain how they were always in receipt of such uniforms to be worn compulsorily and their claims in relation to grant of dress allowance and for which, respondents could have passed a reasoned and speaking order that could then have been adjudicated by this Tribunal.

7. In these circumstances of premature posing of this challenge, the respondents are directed to consider the representations already filed with them and consider issuing a show cause notice to all affected employees in not less than two weeks time from the date of receipt of a certified copy of these orders and upon receipt of a reply from the applicants which shall be filed within the period specified in the show cause notice, the respondents shall also pass a reasoned and speaking order in the matter within four weeks thereafter.

8. In the event that no recovery has been made until now or only partial recoveries, further recoveries shall not be made without issue of final order by the respondents.

9. This OA is disposed of in the aforesaid terms without any order as to costs.

(R. ~~Vijaykumar~~)
Member (A)

V.

JD
27/02/2020

