CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. No.1446/1992

NEW DELHI, THIS 31st DAY OF OCTOBER, 1997.

1. All India Central Govt. Health Scheme Employees Association
through its President
Shri Om Prakash
House No.61
Vill. Munirka
PO JNU, New Delhi.

2. Shri Om Prakash
H. No.61, Vil. Munirka
PO JNU, New Delhi ...APPLICANT

(By Advocate - Shri A.K. Behera)

VERSUS

1. UNION OF INDIA, through
Secretary
M/o Health & Family Welfare
Nirman Bhawan
New Delhi

2. Director General of Health Services
through the Director General
Nirman Bhawan
New Delhi

3. Director (CGHS)
Directorate Gen. of Health Service
Nirman Bhawan
New Delhi ...RESPONDENTS

(By Advocate - Shri K.R. Sachdeva)

TO BE SENT TO THE REPORTER.

(R.K. AHOOJA)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

(22)

O.A. No.1446/1992

NEW DELHI, THIS 8th DAY OF OCTOBER, 1997.

1. All India Central Govt. Health Scheme Employees Association
through its President
Shri Om Prakash
House No.61
Vill. Munirka
PO JNU, New Delhi.

2. Shri Om Prakash
H. No.61, Vil. Munirka
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ORDER

R.K. AHOOJA, MEMBER (A)

The matter relates to the claim of the Central Govt. Health Scheme (CGHS for short) employees for payment of leave salary for the period they were on strike. The applicant Association gave a notice to the respondents on

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16.4.1992 of its intention to go on strike on 13.5.1992 in respect of certain demands raised by it. It is stated on behalf of the Association that it had been agitating for the general demands of the employees through various democratic means such as dharna, demonstrations and relay hunger fasts, but without evoking any response. Earlier also the applicants had gone on strike whereafter the respondents had assured through a memorandum signed on 4.9.1991 that action will be taken on these demands by December 1991. Despite this, it is alleged that the respondents did not implement the demands even though they went on record stating that all the demands were genuine. The applicant Association participated in the discussion to resolve the dispute held by the Labour Commissioner on 11.5.1992 and 12.5.1992, but the matter could not be resolved because of the adamant attitude of the respondents. On the other hand, the Deputy Director (Admn.), CGHS, by order dated 15.5.1992 wrote to all the Additional Directors, CGHS, that in terms of its earlier letter of 7.5.1992, deduction should be made from the pay of all the employees of the CGHS who have participated in the strike after 12.5.1992. The applicants state that in respect of the earlier strike also, similar orders were issued. Thereupon, they had filed an O.A. No.491/1991 before the Tribunal and interim directions thereon were given to the respondents not to make any deduction from the salary of the employees for the strike period. The applicants have in the present O.A. sought the quashing of the impugned order dated 15.5.1992 (A-1) and such other orders issued on the basis of the A-1 order.

2. The respondents in the reply have denied the allegations of the applicant Association regarding the settlement of their demands. They have in the reply

submitted that as per government instructions in accordance with law, the employees who participate in strike are not entitled for salary for the period of their participation in strike on the principle of "no work no pay". These instructions were brought to the notice of the employees by displaying the same on notice boards by various CGHS units. They also submit that in case of earlier strike held in March 1990, similar deductions were made from pay. They further point out that after the O.A. was filed on 29.5.1992, a memorandum of settlement was reached on 11.6.1992 between the applicant Association and the Ministry of Health and Family Welfare, as per which the period of strike is to be treated as dies non, i.e., the period of absence on account of strike is not be counted as service. However, there will be no break in service but the striking employees will not be entitled for any pay and allowances for the period they were on strike. The respondents therefore say that the applicants are now clearly estopped from claiming pay and allowances for the period of strike.

3. We have heard the counsel. Shri Behera, ld. counsel for the applicants submitted that no deduction could be made from the wages unless the strike is declared illegal in terms of the Industrial Disputes Act (hereinafter referred to as the Act). He argued that under Section 22 of the Act, a strike is illegal only if a proper notice is not given. He submitted that the right to strike is a well known and recognised weapon for securing the legitimate demands of the employees. When a strike is not illegal and when a settlement clearly shows that the demands were genuine, the employees cannot be deprived of their salary since it was the obduracy and obstinacy of the respondents which have compelled such an

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action on the part of the employees. Shri Behera also argued that the proviso to FR 17(1) which lays down that an officer who is absent from duty without any authority shall not be entitled to any pay and allowance for the period of such absence, will not be applicable here since the absence here is on account of an industrial and collective action;it was not a willful absence since the strike had been imposed upon the applicants because of the failure of the respondents to respond to the genuine demands. The ld. counsel also urged that deduction from the salary has civil consequences and that the principles of natural justice require that employees who went on strike should have been informed of this decision individually and before deduction a proper show cause notice had to be issued to them.

4. We have carefully considered the above arguments but find no merit therein. In case the applicant Association seeks to rely on Section 22 of the Act, it must also seek its remedy under that Act because this Tribunal cannot go into the question of whether the strike was illegal or not in terms of Section 22 of the Act. The Tribunal has no jurisdiction to adjudicate on cases under the Industrial Disputes Act as held by the Supreme Court in KRISHAN PRASAD GUPTA VS. CONTROLLER, PRINTING AND STATIONERY 1996 (1) SCC 69. The Tribunal has to determine the rights and grievances of the employees only in terms of the statutory rules, regulations and policy guidelines, unless these are shown to be ultravires the validity of Articles 14 and 16 of the Constitution. This being so, we find that the case of the applicants is squarely covered by proviso to FR 17(1). The applicants admit that they were absent from duty. There were government instructions issued vide DOP&T OM No. 11016/1(S)/90-Estt.(B) dated 1.5.1991 reiterating the

principle of "no work no pay". Hence, the employees who admittedly did not work are not entitled to the salary for the period of their absence. We are also not impressed by the argument that the applicants had no notice of such a principle being in force. The applicant Association states that an earlier O.A. No.491/1991 on the same grounds had been filed by them. There is also on record copy of a circular issued by the respondents intimating the employees regarding the consequence of going on strike. Finally, the applicant Association has itself entered into a Memorandum of Settlement in which it has been decided that the period of absence will be treated as dies non.

5. The applicants have mentioned that they have in respect of an earlier strike filed an O.A. No.491/1991 before this Tribunal and interim directions thereafter had been issued stopping the respondents from making any deductions from the salary. This O.A. has since been dismissed by the Tribunal vide order dated 20th January, 1995 since the applicants did not pursue the case.

6. For the reasons mentioned above and in the facts and circumstances of the case, finding no merit, the O.A. is dismissed. No costs.

(R.K. AHOOJA)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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