

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
A L L A H A B A D

Dated : Allahabad this the 5th day of July....1996.

CORAM : Hon'ble Mr. T. L. Verma, Member-J
Hon'ble Mr. D.S. Baweja, Member-A

Original Application No. 1182/95

Union of India through (1) General Manager, C.Rly, V.T.
Bombay.

(2) D.R.M./C.R.Jhansi

...Applicants.

(THROUGH ADVOCATE SHRI G.P.AGARWAL)

Versus

1. Jai Prakash son of Shri Hari Shanker
R/o ; BB I/43-A, Railway Colony,
Mahoba, District Hamirpur.
2. The Prescribed Authority under the Payment of Wages
Act, 1936 at Jhansi(D.L.C)

....Respondents.

O_R_D_E_R

(By Hon'ble Mr. T. L. Verma, Member-J)

This application is directed against the award
issued by the Prescribed Authority under the Payment of
Wages Act, 1936 in P.W.A.Case No.110/91.

2. The respondent No.1 filed P.W.Case No.110/91
before the Prescribed Authority for issuing a direction
to the Union of India for payment of illegally deducted
wages from January, 1990 to July, 1991. The payment of
Wages Authority allowed the claim of the respondent
No.1 Sri Jai Prakash in part and directed the Union
of India to pay a sum of Rs.10430/- with compensation
of Rs.25/- and cost of the case at Rs.150/- . This

application has been filed for quashing the aforesaid order, inter-alia, on the ground that the Prescribed Authority under the Payment of Wages Act has no jurisdiction to entertain the application.

3. After the Administrative Tribunals Act, 1985 came into force with effect from 1.11.1985, the applications challenging the awards allowed by the Prescribed Authority under Section 15 of the Payment of Wages Act, 1936 were being challenged before the Central Administrative Tribunals. The Supreme Court has however, in a recent decision in K. P. Gupta Vs. Controller of Printing & Stationary, reported in J.T.1995(7) S.C. Page 522 has held that the jurisdiction of the District Judge to hear appeals against the award of the Prescribed Authority has not been excluded by Section 28 of the Administrative Tribunals Act. In other words, position as was obtaining before the Administrative Tribunals Act came into force has been restored by the Supreme Court in regard with appeals under Section 17 of the Payment of Wages Act, 1936. This by implication excludes the jurisdiction of the Tribunal to entertain an application under Section 19 of the Administrative Tribunals Act, against award given by the Prescribed Authority.

4. Shri G.P. Agarwal learned counsel for the applicant has urged that despite the ratio laid down by the Hon'ble Supreme Court in the aforesaid case, this Tribunal is still competent to entertain this application under Section 19 of the Administrative Tribunals Act, 1985. Learned counsel for the applicant submitted that the respondent No.1 was not on the roll of the department from 25.9.1989 to 27.7.1990 as he had been relieved and directed to report to the Senior D.P.O. Jhansi for medical examination to ascertain the

category for which he was medically fit. The respondent no.1 instead of comply with the direction filed O.A.No. 854 of 1989 in this Tribunal and did not attend the office till 22.8.1990. The said O.A. was allowed with the direction to accommodate respondent No.1 as far as possible at ~~MBA~~ MBA involving sedantary functions. In compliance with the above direction of the Tribunal, the respondent No.1 was allowed to work at MBA and was paid wages for the period from 23.8.1990 to 20.11.1990 and thereafter he absented from work with effect from 26.11.1990 and was therefore, not entitled to any wages for the period thereafter. ^{it was argued} The Prescribed Authority therefore, had no jurisdiction to entertain the application and determine the entitlement or otherwise of the applicant. It was further argued that since the impugned award is void-ab-initio, this tribunal was competent to entertain the application under Section 19 of the Administrative Tribunals Act, challenging the aforesaid award.


The Supreme Court in Sampat Kumar Vs. Union of India and others, reported in AIR 1987(SC) page 386 has held that from the date on which the Administrative Tribunals have been constituted, jurisdiction of High Courts in entertaining the writ in service matters of Central Government employees has came to an end. It has further been held in the said case that the Tribunals are substitute for the High Court. So long the aforesaid principle of law is not reversed by the Constitution Bench Central Administrative Tribunals can entertain applications in service matter under Article 226 of the Constitution of India. The learned counsel for the applicant submits that in view of the fact that Prescribed Authority has passed the impugned order without jurisdiction, it would be only appropriate for this Tribunal to admit this application in exercise of power under Article 226 of the Constitution of India.

5. We are unable to persuade ourselves to accept the above contention of the learned counsel for the applicant for the reason that the District Judge, while exercising the appellate power is competent to examine whether the Prescribed Authority's order was without jurisdiction or not ? The ambit of the power of the appellate authority is much larger than that of the judicial review in as much as the appellate authority can enter into the question of fact, assess the evidences afresh and arrive at a different conclusion. After the appellate authority's order under Section 17 of the Payment of Wages Act, another opportunity of challenging the said order is available to either of the parties who feels aggrieved by moving the Tribunal under Section 19 of the Act. If the tribunals start entertaining application directly, under Article 226 of the Constitution, without the alternative remedy under Section 17 of the Payment of Wages Act being exhausted legal remedy available at two stages shall be restricted, to one only. This, in our opinion, will not be just and fair. For this reason, we find that the applicant should first be directed to exhaust the alternative remedy as provided under Section 17 of the Payment of Wages Act before coming to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

6. In support of his argument he has placed reliance on the decisions of Hon'ble Supreme Court in Union of India vs. Baleshwar reported in 1994(28) ATC 77 in the case of Delhi Veterinary Association vs. M.S.Gill reported in 1994(2) A.T.C. page 304(F.B). In Baleshwar Singh's case, service matter falling within the jurisdiction of the Administrative Tribunals was entertained and disposed of by the High Court. Hon'ble Supreme Court in appeal set-aside the said order holding that there was inherent lack of jurisdiction in the High Court. This decision does not advance the case of the applicant.

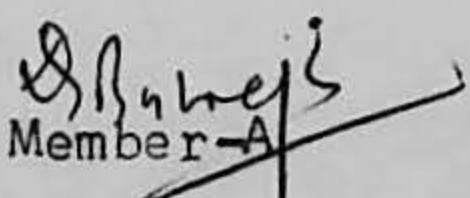
In Delhi Veterinary Association's case, the Tribunal while disposing of an O.A. Sought time limit ~~available~~ for carrying out its directions. The applicant filed a contempt petition against the respondents for not complying with the directions. During the pendency of the contempt petition, the respondents filed a misc. petition for extention of time limit. The applicant resisted the petition on the plea that the Division Bench ~~after~~ have disposed of the application have ~~some~~ become functuous officio and therefore, could not extend the time limit. The contention of the applicant in resisting the misc. application was rejected and it was held that power of extending time is to be exercised on judicial considerations. This judgement has also no relevance so far as the present case is concerned.

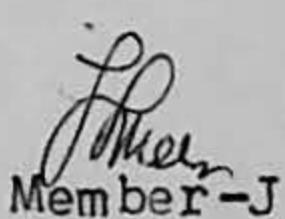
7. It may be argued that the decision of Hon'ble Supreme Court in K. P. Gupta's case should have prospective application and the cases that have already been filed, should remain unaffected. Such a view is not tenable, What the Hon'ble Supreme Court has conveyed in the aforesaid decision is that the authority constituted under Section 15 of the Payment of Wages Act and the appellate authority under Section 17 of the Act fall within the exceptions indicated in Section 28 of the Administrative Tribunals Act. Therefore, the appeals filed under Section 17 of the Payment of Wages Act, 1936 did not come within the meaning suit or other proceeding pending in any other Court or authority immediately before the date of establishment of Tribunals as contemplated under Section 29 of the Act ; ^{the} In other words the Administrative Tribunals Act did not ~~take away~~ exclude the power and jurisdiction of the District Judge to entertain appeals under Section 17 of the

Payment of Wages Act, 1936. That being so, it can not be said that the Administrative Tribunals had jurisdiction to entertain applications against the awards issued by the Prescribed Authority under Section 15 of the Payment of Wages Act prior to the judgment of Hon'ble Supreme Court in K. P. Gupta's case and that the jurisdiction of the Tribunal ceased ^{after} ~~to~~ the said judgment.

8. In view of the discussions made above, we are of the considered view that the tribunals ~~can~~ lack jurisdiction to entertain application under Section 19 of the Administrative Tribunals Act, 1985 against awards issued by the Prescribed Authority under the Payment of Wages Act.

9. For the reasons stated above, we dismiss this application leaving the parties to bear their own costs. The applicant, if advised, may file an appeal before the District Judge within a period of four weeks from the date of communication of this order.


Member-A


Member-J

(pandey).