

No
Payment

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 105/88

Xxxxxxx.

DATE OF DECISION 27.9.1991

Divisional Accountants' Association Petitioner
ion & Ors.

Mr. D. N. Mehta

Advocate for the Petitioner(s)

Mr. Shailesh Brahmbhatt

Versus

Union of India & Ors.

Respondent

Mr. Jayant Patel for Res. No. 1 & 2 Advocate for the Respondent(s)

Mr. Anil Dave for Res. No. 3 to 6.

C O R A M :

The Hon'ble Mr. M. M. Singh

: Administrative Member

The Hon'ble Mr. R. C. Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *No*

2. To be referred to the Reporter or not? *No*

3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*

4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

1. Divisional Accountants' Association, Gujarat State, (Through its President Mr. M.R. Doshi C/o. Executive Engineer Ahmedabad City Construction Division I, L.D. Engineering College Compound, Ahmedabad- 15.
2. Shri P.S. Trivedi, Secretary, Divisional Accountants' Association, Gujarat State, C/o. Executive Engineer, Ahmedabad R & B Division, Patnagar Yogana Bhavan, Gujarat College, Elisbridge, Ahmedabad.
(Advocate: Mr. Shailesh Brahmbhatt)

.. Applicants

VERSUS

1. Union of India
Through:
The Secretary, Ministry of Finance, New Delhi.
2. The Accountant General
(Account & Entitlement)
Race Course, Rajkot.
3. State of Gujarat,
Through:
The Chief Secretary,
Government of Gujarat,
General Administrative Deptt.,
Sachivalaya,
Gandhinagar.
4. Shri P.A. Raj,
and/or his successor-office,
Additional Chief Secretary,
Narmada Development Deptt.,
Sachivalaya,
Gandhinagar.
5. Shri V.P. Kamdar,
and/or his successor-in-office,
Secretary to Government,
Roads and Building Department,
Sachivalaya,
Gandhinagar.

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6. Shri V.B. Patel,
and/or his successor-in-office,
Secretary to Government,
Sachivalaya, Gandhinagar. : Respondents
(Advocate: Mr. Mukesh Patel for Mr.
Jayant Patel for Res. No. 1 & 2.
None for respondents No. 3 to 6
present.

JUDGMENT

O.A./105/88

Date: 27.9.1991

Per: Hon'ble Mr. R.C. Bhatt : Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act is filed by the Divisional Accountants' Association, Gujarat State through its President and the Secretary praying that the Respondent No. 3, State of Gujarat be restrained from acting in pursuance of the communication dated 28th May, 1987, Annexure A/1 from recovering the amount of double payment made to the members of the applicant association under Government Resolution dated 6.6.1985, 28.6.1985 and 10.10.1985 Annexure A/2 collectively and the applicants have also prayed that the communication dated 28th Sept., Annexure A/3 1987/so far as it states that the Divisional Accountants are not entitled to double payment during the strike period from June, 1985 to August, 1985 be quashed and set aside.

2. Some unions of Government employees of the State of Gujarat had given call to go on strike from 7.6.1985

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for abolition of the prevalent reserved roster system. The Govt. of Gujarat passed Resolution dated 6.6.1985, 28.6.85 and 10.10.85 produced vide Annexure A/2 extending the double payment of salary to the employees who had attended their duties during the strike period from June to August, 1985. The Govt. of Gujarat by its Resolution dated 10.10.1985 had clarified that the employees and officers of Central Govt. or any other agency on deputation to the State Govt. were not eligible for double payment. But All India Service Officers belonging to IAS, IPS, IFS, etc. were eligible to the double payment provided they fulfil the conditions prescribed for such drawal. It is mentioned in para 6.3 of the application that the Divisional Accountants are the Central Govt. servants and the Accountant General Posts Divisional Accountants to assist the Divisional Officers of the concerned State Govt. The functions of the Divisional Accountants are described in the Central Public Works Accounts Code. It is averred in the application that the Divisional Officers are in general the Executive Engineers of the Public Works Deptt. of the concerned State Govt. The applicants have produced at Annexure A/4 the relevant extract of Chapter IV "Relations with Accountant General" of the Central Public Works Accounts Code which describes the functions of the Divisional Accountant working in the offices of the Divisional Offices of the concerned State Govt. It is averred in the application that the appointing authority of the Divisional Accountant is the Accountant General of the concerned State. The Accountant General is joined as Respondent No.2 in this case. It is averred in the application that the administrative control so far as the Divisional Accountants are concerned, lies with the Accountant General, Respondent No.2 but according to the applicants

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the Divisional Accountants are meant for the concerned State Government, as seen from Chapter IV of the Central Public Works Account Code and the Divisional Accountants are paid by the concerned State Govt. including the pensionary benefits. The applicants have categorically in the first line of para 6.3 stated that the Divisional Accountants are the Central Government servant and that the competent authority of the Divisional Accountant is the Accountant General of the concerned State and the administrative control is with the Accountant General. The applicants seem to have tried to show that they are the State Govt. servants. It cannot be disputed, however, that the Accountant General is an office of the Central Govt. put in the State but merely because the Accountant General is put in the State ~~this~~ does not become an office of the State Government nor Divisional Accountants working under the Accountant General thereby cease to be the Central Government servants. It is the case of the applicants that the Divisional Accountants cannot be considered to be the employees and officers of the Central Govt. on deputation to the State Govt. when they are not specifically deputed to the State Govt. by the Accountant General. But this plea is self-contradictory as applicants have averred in the very first line of para 6.3 that the Divisional Accountants are the Central Govt. servants. Moreover, merely because they are working under the Administrative control of the Accountant General functioning in the State they cannot say that they are not the Central Govt. servants.

3. The State Govt. of Gujarat - respondent No.3 extended the double payment to the employees who had attended the duties during the strike period namely June-August, 1985 vide Annexure A/2 dated 6.6.1985, 28.6.1985 and 10.10.1985

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The applicants want to claim the benefit of this Resolution for the double payment. The question thereafter arises whether the Central Govt. employee can file the application under Section 19 of the Administrative Tribunals Act for the enforcement of the resolution of State Govt. and restraining the State Govt. from recovering the amount of double payment made to the applicants under the resolution Annexure A/2. The respondents 1 and 2 i.e. Union of India and Accountant General in their reply have contended that the Central Govt. has not issued any instructions or circulars conferring any right upon the applicants to claim double salary for the period in question. It is contended that if the State Govt. had issued any instructions, then it is applicable to the State Govt. employees and the same cannot be applied to the Central Govt. employees and the Central Government employees cannot claim any relief on that basis against the respondent No.1 and 2 and this Tribunal will have no jurisdiction to deal with the dispute based on the resolution of the State Govt. The applicants in their rejoinder have stated that this Tribunal will have jurisdiction to decide and agitate the question agitated in this application. It is stated in the rejoinder that the benefit of double pay accorded to all the employees working in the State Govt. is wrongly denied to the applicants. Section 14 of the Administrative Tribunals Act, 1985 very clearly says that the Central Administrative Tribunal shall exercise on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that by all Courts in relation to recruitment, and matters concerning recruitment, to any All India Service or to any Civil Service of the Union or a Civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian, all service matters concerning a member of any All India Service; or

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(not being a member of an All India Service or a person referred to in clause (c)) appointed to any civil service of the Union or any Civil post under the Union or a civilian (not being a member of an All India Service or a person referred to in clause (c)) appointed to any defence services or a post connected with defence and pertaining to the service of such member, person or civilian in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Govt., all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Govt. or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Govt. for such appointment. Therefore, the applicants being the Central Govt. employees their challenge to the Annexure A/1 dated 28.5.1987 by which the Govt. of Gujarat decided to recover the double payment given to the applicants on the basis of the Resolution Annexure A/2 will not lie against the Union of India as the said dispute cannot fall under Section 14 of the Act. Even assuming for the sake of argument, the applicants' case is considered on the basis that they are State Govt. employees even then according to Section 14 of the Act, they cannot come before this Tribunal for the above dispute. We, therefore, hold that there is much substance in the contention of the respondents 1 and 2 that the dispute in question is beyond the purview and scope of Section 14 of the Administrative Tribunals Act, 1985 and this Tribunal will have no jurisdiction to deal with the dispute in question.

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4. If the resolution dated 10th October, 1985 is examined, it is made clear that the employees and officers of the Central Govt. or any other agency on deputation to the State Govt. are not eligible for double payment. It is mentioned in it that All India Service Officers belonging to IAS, IPS, IFS, etc. were eligible provided they fulfil the conditions prescribed for such drawal. The applicants have alleged that they are not on deputation to the State Govt. and the reliance is placed on Annexure A/5 dated those 25.5.1987 but it is not necessary to go into details because we hold that the applicants are Central Govt. employees on their own admission in para 6.4 of the application. The respondents No.1 & 2 in the reply have contended that the Accountant General, Ahmedabad referred the matter of the alleged dispute about double payment to the Comptroller and Auditor General of India, New Delhi regarding admissibility of double salary to the Divisional Accountants. The office of the Comptroller and Auditor General of India, New Delhi vide communication dated 4th August, 1987 produced at Annexure-I informed the Accountant General, Ahmedabad that the Divisional Accountants are treated as Central Govt. employees in the State where their cadre is controlled by Accountant General and opined that double salary for the period between June 1985 to the end of August, 1985 was not admissible to the Divisional Accountants at all. Therefore, the competent authority has also decided that Divisional Accountants are not entitled for the double salary. The applicants in the rejoinder stated that this view of the Comptroller and Auditor General is erroneous in as much as other officers like IAS, IPS and other Central Government employees working for State Governments are also governed by Central Govt. and they have been accorded the benefit of double salary whereas the Divisional Accountants are denied the same. therefore, the denial ^{of} the State Govt. is absolutely arbitrary, capricious and violative of Articles

14 and 16 of the Constitution of India. The resolution dated 10th October, 1985 of the Govt. of Gujarat specifically says that the employees and officers of the State Govt. or any other agency on deputation to the State Govt. are not eligible but IAS, IPS, IFS officers of All India Service were eligible provided they fulfilled the conditions for such drawal.

Therefore, the applicants have ^{hardly} case against the State Govt. also.

Moreover, Annexure A/3 dated 28.9.1987 written by Deputy Accountant General (A & E) to the Secretary to the Govt. of Gujarat, General Administration Department shows that the incentive of double salary allowed by the State of Gujarat to their employees was not admissible to the Divisional Accountants as they are neither treated as on deputation to the State Govt. nor as State Govt. employees and the instructions was given to the State Govt. concerned Superintending Engineer/Executive Engineers for recovery of double pay in cases where Divisional Accountants were paid double salary during the strike period. It is within the purview of the Union Govt. to consider this question about these employees and there is no question of violation of Article 14 and 16 of the Constitution of India as alleged by the applicants. Moreover this is not ^{the} forum for the applicants to vindicate their grievance ... against the State of Gujarat. The applicants have also produced at Annexure A/6 the letter dated 5.12.1985 addressed by the Comptroller and Auditor General of India, New Delhi to the Accountant General (A & E) on the subject of grant of adhoc bonus to Divisional Accountants in which it is mentioned that the Divisional Accountants are doing the work of the State Govt. and therefore, they are not entitled to bonus under Central Govt. orders but if there is a scheme of grant of bonus for State Govt. servants, the Divisional Accountants can draw the bonus under the State Govt. Scheme. On this analogy, the applicants have ~~alleged~~ that the benefit of double payment extended to other State Govt. employees should be extended to Divisional Accountants and it

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was rightly extended to them. As observed earlier the Resolution Annexure A/2 cannot bind the respondents No.1 & 2 because the same are not issued by the Respondents No. 1 and 2 and this resolution did not confer any right to the applicants to claim and they cannot claim any relief on that basis against Respondents No.1 and 2.

5. The applicants have produced at Annexure A/7 the resolution dated 15.5.1987 of the Govt. of Gujarat, General Administration Department by which it directed that the amount paid towards the double payment to the officers belong to the All India Services, IPS, IFS, etc. should be recovered from their pay in five equal monthly instalments begining from the salary of May, 1987. This action was taken by the State Govt. in consultation with the Govt. of India and the Office of the Accountant General of Gujarat as mentioned in this Resolution. Therefore, so far as the initial resolution extending benefits of double payment to the All India Service Officers was concerned, the said benefit was also withdrawn. However, the case of the applicants is that the State Govt. vide its resolution dated 15th October, 1987 vide Annexure A directed that the Govt. resolution dated 15th May, 1987 i.e. Annexure A/7 should be waived ab initio and the recovery of the amount of double pay if already made should be waived and amounts so recovered should be repaid to the concerned officers. Thus, according to the applicants similar treatment was not extended to the Members of the applicants' association and by the communication dated 28th May, 1987 Annexure A/1, recovery was sought to be made from the salary of the concerned Divisional Accountants. It may be noted at this stage also that the Govt. Resolution Annexure A/2 does not apply to the Divisional Accountants as per the contention of the Respondents No.1 and 2 in the reply. Payment to the Divisional Accountants are governed by the orders issued by the Govt. of India in consultation

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with the Comptroller and Auditor General of India under Article 148 (5) of the Constitution and therefore Annexure A/3 dated 28.9.1987 by the Office of respondent No.2 that the Divisional Accountants are neither treated on deputation to State Govt. nor State Govt. employees and therefore, they are not entitled to the double salary. In our opinion, this contention has much substance and in view of Annexure A/3, the applicants cannot claim the double salary. The Divisional Accountants are constituted in a separate cadre under the administrative control of the Accountant General under para 314 of the Manual of standing orders (Administration). The Divisional Accounts are discharging the functions on behalf of the Accountant General. The pay, allowances, pension, etc. admissible to them is decided by the Central Govt. in consultation with the Comptroller and Auditor General even though they are borne by the State Govt. It is rightly contended by respondents No.1 & 2 that the State Govt. has no jurisdiction of deciding the quantum of pay and allowances admissible to the Divisional Accountants. The applicants' argument on the basis of Annexure A/6 about the grant of adhoc bonus of Divisional Accountant is also misconceived because the Comptroller and Auditor General, New Delhi had sent a communication dated 27.5.1986 to the Accountant General, Rajkot regarding grant of adhoc bonus to the Divisional Accountants in which it is made clear that Divisional Accountants can be allowed bonus at Central rates and the cost would be borne by the State Government, a copy of this letter is produced at Annexure A by respondents No.1 & 2 and the circular Annexure A/6 was treated to have been withdrawn. Moreover, if the Govt. of Gujarat as per Annexure A/8 waived the recovery of the amount of double payment from the All India Service Officers like IAS, IPS, the applicants do not on that basis ^{get right to} enforce their claim against

Respondents No.1 and 2 that the same treatment is not given to them and as the double salary is recovered from them, the action is violative of Article 14 and 16 of the Constitution. Moreover, as observed above, their grievance against the Govt. of Gujarat on this point cannot be entertained before this forum.

6. The respondents No.3 to 6 i.e. State of Gujarat, Additional Chief Secretary, Narmada Development Department Secretary to Government, Roads and Buildings Department and Secretary to Government, Sachivalaya, Gandhinagar have also filed their reply and contended that this application should be dismissed inasmuch as the applicants are not covered by the provisions of Section 14 of the Administrative Tribunals Act. It is also contended by them that the double salary was to be given only the employees of the Respondent No.3, Government, that members of the Applicant No.1, association who were not employees of Respondent No.3 Government were also paid double salary and, therefore, the additional amount paid to the concerned Central Government employees was sought to be recovered by respondent No.3 Government. It is contended that the applicants are not employees of State of Gujarat but are employees of Union of India and they were not employed by respondent No.3. It is contended that the double salary was to be paid only to the Gujarat employees and not to the persons employed by the Union of India who were working under State of Gujarat as deputationists. They have contended that the persons employed by the Accountant General of the concerned State did not become employees of the concerned State Government. It is contended

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that the Members of Applicant No.1 association were appointed by respondent No.2 and they are employees of respondent No.1 and by working under respondent No.3, a person cannot get status of an employee of the State of Gujarat. It is contended that members of applicant No.1 association form a separate class which is different than the State Government employees appointed by respondent No.3 and therefore, members of applicant No.1 association were rightly given different treatment and the question of discrimination does not arise.

7. The respondent No.3 to 6 have further contended in the reply that though initially double pay was granted to the members of All India Service officers on the basis that they are at par with the employees of State of Gujarat, subsequently the additional salary paid was recovered at the instance of Union of India. However, subsequently respondent No.3 decided not to recover the double salary paid to them. They have contended that, therefore, it cannot be said that All India Service Officers had a right to receive double salary like other employees of the State of Gujarat.

8. Therefore, it is clear that members of All India Service officers who were initially granted double pay were also directed to pay back the additional salary paid to them at the instance of Union of India. The applicants are also the employees of Respondent No.1. Therefore, now there is no scope of any grievance by applicants that the members of All India Service officers were granted double pay while the applicants are directed to pay back the double salary. Respondent No.3 had subsequently decided to waive that order of recovery from the members of All India Service Officers but by that Act. It cannot be said that All India Service Officers had a right to receive double salary like other

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employees of the State of Gujarat and the applicants had also a right to double salary. The decision of the Union of India was clear on the point of double salary as appears from Annexure A/7 dated 15th May, 1987 that members of All India Service Officers were not eligible for the payment of double salary. Therefore, there is no question of discrimination between those officers and the applicants and merely because subsequently respondent No.3 waived the recovery from the All India Service Officers, the applicants cannot get the relief against the respondent No.1 & 2 that A/3 dated 28.9.1987 so far as it relates that the Divisional Accountants are not entitled to double payment during the strike period should be quashed. So far their prayer that the State Govt. be restrained from acting in pursuance of the communication dated 28th May, 1987 Annexure A1 from recovering the amount of double payment made to the members of the applicant-association also cannot be granted because this Tribunal has no jurisdiction to entertain this dispute in view of Section 14 of the Administrative Tribunals Act.

9. The applicants have alleged in the application that the applicant No.1 association had sent a telegram dated 23.6.1987 vide Annexure A/9 requesting the State Govt. to keep recovery in abeyance and to afford an opportunity of personal hearing to applicant No.1 but the State Govt. vide its communication dated 6.7.1987 Annexure A/10 made it clear to the applicant No.1 that the decision regarding recovery was final and rejected the request of applicant No.1 so far as grant of personal hearing was concerned. It is alleged that the applicant No.1 made a representation dated 21.9.1987 Annexure A/11 to the Chief Minister of Gujarat against their recovery but the State of Gujarat without even affording an opportunity of being heard to the applicant decided to recover.

the payment of double salary from the applicants which is arbitrary action. The respondent No.3 to 6 in their reply have contended that the Divisional Accountants have no legal or fundamental right to get the said amount from Respondent No.3 and they had denied that the applicants had any right of being heard in the instant case because the amount which is being recovered from them, was paid to them ~~be~~ rightly recovered by respondent No.3. The applicants in the rejoinder have stated that principle governing the scheme of double salary ought to have ^{been made} applicable to the Divisional Accountants also. They have stated that they are not on deputation in the State Govt. but they are employees who are actually working in the office of State Govt.

10. As observed above, the applicants are the Central Govt. employees and therefore, they cannot get the benefit of the resolution vide Annexure A/2 which are given to the State Govt. servants and therefore, grievance against the State Govt. cannot be entertained by this Tribunal.

11. The learned advocate for the applicants also submitted that the applicants' association had subsequently demanded personal hearing by means of a telegram dated 23.6.1987 Annexure A/9 and ~~vide~~ letter dated 6.7.1987 Annexure A/10 the said request was rejected. He submitted that this action on the part of the State Govt. denying the opportunity of being heard to the applicant would violate the principles of natural justice. In support of ~~his~~ submission he had relied on the decision in S.H.Shirekar vs. Union of India and Others 25 (2) GLR 1238, Mohd. Rashid Ahmad vs. State of U.P. AIR 1979 S.C. 592 and Avon County Council vs. Howlett (1983) I ALL ER 1073. The grievance of the applicants is that the action of the State Govt. of seeking to recover from the salaries of the members of the applicant -

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association the amount of double payment paid to them without giving an opportunity of being heard is against the principles of natural justice and is in breach of promissory estoppel. The bar of Section 14 of the Administrative Tribunals Act comes in the way of the applicants and as they are Central Govt. employees their grievance against State Govt. cannot be entertained on the facts of this case and therefore, the above decision would not help them. The applicants, therefore, would not be entitled to seek the relief prayed in para 9(A) of the application.

12. The respondents have also contended that the application is beyond the period of limitation and the same deserves to be dismissed under Section 21 of the Administrative Tribunals Act, 1985 but there is no merit in this contention because the applicants have filed this application within one year from the impugned order Annexure A/1 dated 28th May, 1987 and hence the said contention is rejected.

The applicants may if so advised, make representation to the Union of India to recommend the State Govt. to waive the recovery of double payment made to them and the Union of India may consider the request of the applicants if they deem legal and proper. This is only the suggestion and not a recommendation to the Union of India and this suggestion will not give any right to the applicants to agitate their dispute if the Union of India does not accept the request.

13. Having regard to the facts of this case, we find no substance in the application of the applicants and the same deserves to be dismissed. The result is that the application fails and is dismissed. No orders as to costs.

Resd

(R.C.Ehatt)
Member (J)

M. M. Singh
27/9/91

(M.M.Singh)
Member (A)

*At the oral remit of learned advocate
for applicant - Mr. Shekhar Bhatnabhatt*