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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.554 OF 1998
Cuttack, this the 14th day of December, 1998

Ajaya Kumar Swain and others Applicants

Vrs.

Accountant General (A&E)
and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

l.m.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *17.12.98*

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.554 OF 1998
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CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

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1. Ajaya Kumar Swain, Accountant
s/o Golakh Bihari Swain
2. Akshaya Kumar Nayak, Sr.Accountant,
s/o Kailash Chandra Nayak
3. Kirti Chandra Nanda, Sr.Accountant

s/o Purna Chandra Nanda
4. Dukhishyam Sahoo (2), Sr.Accountant
s/o Adikanda Sahoo
5. Debabhakata bej, Clerk
s/o late Sadhu Charan Bej
6. Ranjit Garuda, Accountant,
s/o Gangadhar Garuda
7. Jharana Mallick, Clerk,
w/o Santosh Mallick
8. Amar Kumar Mishra, Clerk
s/o Radhashyam Mishra
9. Yakub Dang, Sr.Accountant
s/o late P.Dang
10. Sudam Charan Baiburi, Clerk
s/o late Markand Haiburu
11. Budhadeb Polei, Sr.Accountant
s/o late Biswanath Polei
12. Izaz Hussain Khan, Accountant,
s/o late Rafique Khan
13. N.Jiten Singh, Clerk,
s/o late Achoubi Singh
14. Rajesh Sahoo, Clerk,
s/o Premananda Sahoo
15. R.N.Mallik, Clerk,
s/o late Gangadhar Mallick
16. Dasharathi Kanhar, Sr.Accountant
s/o Dhruba Charan Kanhar
17. P.Jagadeswar Rao, Accountant
son of late P.Appa Rao
18. Brundaban Behera, Sr.Accountant
s/o late Sanatan Behera

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19. Sadhu Charan Nayak, Group-D
s/o Baidhar Nayak
20. Debasish Mohanty, Clerk
s/o Dhruba Charan Mohanty
21. Rabinarayan Swain, DEO
s/o Krushna Chandra Mohanty
22. Charan Nayak, Sr.Accountant
s/o late Netrananda Nayak
23. Kalyan Bhoi, Clerk,
s/o Anadi Bhoi

All are employees of O/O Accountant General (A&E),
Orissa, Bhubaneswar Applicants

By the Advocates - M/s G..K..Mishra
& G.N.Mishra.

Vrs.

1. Accountant General (A&E),Orissa,
Bhubaneswar.
2. Prabhakar Muni, aged 37 years,
son of late Biswanath Muni,
Senior Accountant, section - C.A.Cell,
Office of Accountant General (A&E),
Orissa and General Secretary,
Orissa Audit and Accounts Association, Bhubaneswar,
Dist..Khurda
(Intervenor) ... Respondents

By the Advocates - Mr.B.K.Nayak,
Addl.C.G.S.C for
Respondent No.1
&
M/s K.C.Kanungo &
S.Behera for
intervenor-responde nt
No.2.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the twenty-three
applicants, who have been permitted to file the
application jointly, have prayed for a direction to

Accountant General (A&E), Orissa, Bhubaneswar (respondent no.2) not to deduct any part of their monthly salary and to refund the amounts deducted from their salary during August, September and October 1998. The relief claimed is couched in very general terms. From the application it does appear that the applicants' grievance is not with regard to the normal deductions made from their salary for every month by way of Provident Fund, repayment of advances and income-tax, if any.

2. The facts of this case, according to the applicants, are that they are employed in the office of Accountant General (A&E), Orissa, Bhubaneswar. From their pay bills for the month of August, September and October 1998 Rs.3/- has been deducted entering the same in the Acquittance Roll. It is stated by the applicants that they have ascertained that the deduction is on account of crediting the deducted amounts in favour of Orissa Accounts Association towards monthly subscription of the applicants. The applicants further state that they have never enrolled as members of that Association. The applicants further state that they have approached the authorities for refunding the above amount. They have approached Deputy Accountant General on 4.9.1998, but not having received any favourable response, they have approached the Tribunal in this O.A. with the prayer referred to earlier.

3. Respondent no.1, Accountant General (A&E), Orissa, Bhubaneswar, in his counter has pointed out that these petitioners have given their option to become members of Orissa Accounts Association with the implementation of Central Civil Services (Recognition of Service Association) Rules, 1993. According to these

Rules, the Drawing & Disbursing Officer has to deduct the rates of subscription from the members of the Association and allocate the same to the Association. Copy of the Rules and instructions issued thereunder is at Annexure-R-1. It is further stated that one Panchanan Singh claiming to be the Secretary of All India Audit and Accounts Association (Accounts Wing), Bhubaneswar Branch (unrecognised), has filed a Title Suit before the Civil Judge (Senior Division), Bhubaneswar, challenging the recognition of Orissa Accounts Association. The learned Civil Judge (Sr. Division), Bhubaneswar, had granted interim stay in the matter, but the same was not extended beyond 15.9.1998 on the ground that the plaintiff Association is not a recognised one. The Title Suit and Misc. Case are pending for hearing before the learned Civil Judge (Senior Division), Bhubaneswar. Against the order of the learned Civil Judge (Senior Division), Bhubaneswar, the plaintiff in the Title Suit has filed Civil Revision No. 45 of 1998 before the learned District Judge, Khurda at Bhubaneswar. There also the plaintiff in the Title Suit had prayed for interim injunction which was not granted. The hearing has been concluded and the matter posted to 10.11.1998 for orders after conclusion of hearing. Being aggrieved by the interim order of the learned District Judge, Khurda at Bhubaneswar, the plaintiff in the Title Suit has filed a writ petition before the Hon'ble High Court of Orissa, which has been ultimately dismissed as withdrawn. The order of the Hon'ble High Court is enclosed to Annexure-R/2. Respondent no.1 has stated that the plaintiff in the Title Suit, which is pending before the

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learned Civil Judge (Sr.Division), Bhubaneswar, claims that the present applicants before us are members of his Association and therefore, the present O.A. filed by the applicants before the Tribunal is not maintainable as for the same cause of action two Courts cannot be approached at the same time for redressal. Respondent no.1 has further stated that the applicants have suppressed the facts in the matter and have not presented the correct picture before the Tribunal and therefore, the application should be dismissed with cost. It is further submitted by the respondent that the applicants had earlier given their option to join the Orissa Accounts Association. But they have later on withdrawn their consent for the purpose of joining All India Audit and Accounts Association (Accounts Wing), Bhubaneswar Branch. It is submitted by respondent no.1 that such withdrawal was not considered by him since as per Rules prescribed the withdrawal from one Association to another can be done only in the month of April of succeeding year and therefore, the action taken by respondent no.1 in deducting the amount of Rs.3/- is perfectly legal and valid. It is further submitted that one Sadhu Charan Nayak, present applicant no.19 has written a letter to Deputy Accountant General (Administration) on 5.11.1998 stating that he is not a party in this O.A. and his signature obtained for some other purpose has been utilised by the other applicants for filing this case. The petition dated 5.11.1998 of applicant no. 19 Sadhu Charan Nayak is at Annexure-R-4. It is further submitted that subscription of Rs.3/- is being deducted from the salary of the applicants on the basis of their consent. As per Rule any member can

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withdraw his consent only in the month of April. It is further stated that applicant no.7 Jharana Mallik and another have not withdrawn their consent and it is understood that they are also not aware of filing of this O.A. It is further stated that the subject-matter of the case relates to recognition of Association and collection of membership fee for the Association. These matters do not affect the service conditions of the applicants and therefore, it is submitted that the application is not maintainable. On the above grounds, the respondent ~~No.1 has~~ *Alm.* opposed the prayer of the applicant.

4. In this case, one Prabhakar Muni, General Secretary, Orissa Accounts Association, has filed an intervention application for being impleaded as a respondent on 18.11.1998 with copy to the other side. In order dated 19.11.1998 the petition for intervention was allowed and Orissa Accounts Association, Bhubaneswar, represented by Prabhakar Muni was impleaded as respondent no.2. Respondent no.2 has also filed a counter. In the counter filed by respondent no.2 it has been stated that the dispute relates to recognition of Service Association and this does not relate to conditions of service. In support of this it is stated in the counter filed by respondent no.2 that Full Bench of the Tribunal in the case of Indian National N.G.O. v. Secretary, Ministry of Defence have laid down that even though the Rules relating to recognition of Service Association have been made under Article 309 of the Constitution, it does not mean that

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they relate to condition of service contemplated in Section 3(q) of the Act and in regard to which the Tribunal has been conferred jurisdiction. In view of this, it is submitted that this dispute is not maintainable before the Tribunal. It is also stated that membership of employees of a Service Association and consequent deduction of subscription from their salary cannot be qualified as service matter as it has no proximate nexus to condition of service, i.e., holding of the post. There is no legal compulsion on an employee to be a member of Service Association. An employee becomes a member of Association by voluntary exercise of option and an ununionised employee is ^{an} qualified to become a member of Civil Service as an unionised employee and therefore, membership of Union has nothing to do with the service conditions. It is further stated that the applicants in the O.A. applied for enrolment as members of Orissa Accounts Association in pursuance of the Recognition of Service Association Rules 1993 read with the circular dated 27.7.1998 and circular dated 24.7.1998 of Comptroller & Auditor General of India. These two circulars are at Annexures-B-1 and B-2 of Misc.Petition No. 687/98. They also gave letter of authorisation for deduction of subscription of Rs.3/- from their monthly salary bill and payment of the same to Orissa Accounts Association (respondent no.2). Copies of membership applications and letter of authorisation given by these applicants were submitted to the office of respondent no.1 and accordingly, the deduction of subscription is perfectly authorised and is not arbitrary, as has been alleged. It is also stated that the applicants having once exercised their option to be members of Orissa Accounts

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Association and having given their consent for deduction of subscription, cannot revise or withdraw the same till the month of April next year. It is also stated that after giving their applications for membership of Orissa Accounts Association and their authorisation for deduction of subscription, they have later on submitted letter of withdrawal for the purpose of joining All India Audit & Accounts Association (Accounts Wing), Bhubaneswar Branch. This is subject-matter of TS No. 457/98 which is pending adjudication. It is also stated that Orissa Accounts Association is a recognised Association whereas All India Audit & Accounts Association (Accounts Wing), Bhubaneswar Branch, is not a recognised Association. In view of the above, respondent no.2 has also opposed the prayer of the applicants.

5. We have heard Shri G.K.Mishra, the learned counsel for the petitioners, Shri B.K.Nayak, the learned Additional Standing Counsel appearing for respondent no.1, and Shri K.C.Kanungo, the learned counsel appearing for respondent no.2, and have also perused the records.

6. The first point to be considered is whether the application is maintainable before the Tribunal. From the averments of the parties it is quite clear that the real dispute is between two Associations and their efforts to acquire membership for them from amongst the employees in the office of respondent no.1. It is clear that membership of an Association and the dispute with regard to such membership is not a matter dealing with service conditions and therefore, such a dispute is not maintainable before the Tribunal moreso because an

employee by his condition of service is not obliged to become a member of any Association. But in the present case the prayer of the applicant is not with regard to membership of the Association. Their prayer is with regard to deduction of Rs.3/- from their salary bills for the months of August, September and October 1998. They have prayed for a direction to respondent no.1 not to deduct any amount in future and to refund the amounts deducted for those three months to them. The entitlement of getting salary is definitely a part of service condition and any deduction, if the same is unauthorised, is *prima facie* connected with their service condition. Even an authorised deduction like Provident Fund and repayment of advances taken can be taken to be a matter relating to conditions of service and can be agitated in a dispute before the Tribunal. In the instant case, the deduction of Rs.3/- from the salary bill of each of these applicants for the months of August, September and October 1998 is admitted. The sole question for determination is if the deduction is authorised or not. If the deduction is not authorised, naturally it will be relatable to their service condition. In view of the above, we hold that the application in its present form is maintainable before the Tribunal.

7. Coming to the facts of the case, it is seen from Annexure-R/1 that Central Civil Services (Recognition of Service Associations) Rules, 1993 were brought into force with effect from 5.11.1993 in circular dated 9.11.1993. The Rules are at enclosure to Annexure-R-1. In course of hearing of this petition before us there has been some submission with regard to

recognition or lack of it of the Orissa Accounts Association. But for the purpose of deciding the question of relief, as claimed in this O.A., it is not necessary for us to go into the question whether the Association is recognised or not. The circular dated 9.11.1993 at Annexure-R-1 lays down in paragraph 5 that detailed procedure regarding recovery of subscription for the Associations from the pay-rolls shall be prescribed by the Comptroller General of Accounts. Accordingly, Department of Personnel & Training in their circular dated 31.1.1994 (Annexure-R-3) have laid down that consent for deduction of annual subscription shall remain valid till altered or withdrawn. The revised option for deduction, if any, can be exercised only in the month of April each year to be effective from July of that year. It is necessary and in this connection to take note of Rule 5(d) of the Central Civil Services (Recognition of Service Associations) Rules, 1993 under which there can be more than one Association because this Rule lays down that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognised if it commands at least 15 per cent membership. From this, it is clear that there can be more than one Association, but an employee cannot be a member of more than one Association. This is laid down in circular dated 17.4.1995 of Comtroller and Auditor General of India in which it is laid down that a Government servant can subscribe to only one Association. However, instances have come to notice where employees are giving their option in favour of more than one Association. It has been clarified

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in this circular that option of an employee in favour of more than one Association will be treated as invalid and will not be taken into account for any of the Associations. In the instant case, whether there are one or two Associations and whether either or both of them are recognised or unrecognised are matters which do not fall to be considered in the present case. Respondent no.1 has stated that the present applicants have given their applications for becoming members of Orissa Accounts Association. The originals of these applications have been produced before us and we have verified those with the names and signatures of the applicants in their Vakalatnama filed with the O.A. From this, it is clear that these applicants did apply for membership of Orissa Accounts Association. Along with the applications they have also sent the letter of authorisation. We have also compared the signatures on the letter of authorisation with the signatures on the Vakalatnama filed by the applicants and we have no doubt that these applicants have also given letter of authorisation for deducting Rs.3/- from their pay bill. As they have applied for membership of Orissa Accounts Association and have also given their authorisation to deduct Rs.3/- from their monthly salary bill as membership subscription to the Association, under the circular dated 31.1.1994 such consent for deduction can be altered or withdrawn only in the month of April to be effective from July of that year. It is also to be noted that in this circular the subscription has been noted as annual subscription and in the circular it has been indicated that this annual subscription can be deducted in instalments from the monthly pay bill. In

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other words, once a person has chosen to become a member of the Association and has given his consent for deduction of the subscription, it must be deemed that he has agreed to the annual subscription which is to be deducted in monthly instalments as indicated by the applicants. Once this is done, the Government servant can withdraw or alter his consent regarding deduction of subscription only in the month of April to be effective from July. These are conditions of membership as laid down by the Government in different circulars. It is not for the applicants to quickly change their mind off and on regarding their membership of the Association of which they want to become members and the Drawing & Disbursing Officer cannot be at the beck and call of the caprice or whim of such Government servants with regard to membership of the Association which they may like to change. Because of this, the instructions lay down that consent regarding deduction once given can be changed only in the month of April to be effective from July. In view of the above, the applicants having once given their consent for deduction of the annual subscription to Orissa Accounts Association by way of deduction of Rs.3/- from their monthly salary bill can change it only in April 1999 to be effective from July 1999. This is the condition of their giving consent for deduction and they should not have given the consent if they were not sure of their willingness to continue to agree to the deduction till June 1999. We, therefore, hold that the applicants having given their consent for deduction of Rs.3/- from their monthly salary bill towards annual subscription to Orissa Accounts Association, can

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have no grievance regarding such deduction made by Accountant General (A&E), Orissa, Bhubaneswar. We also find that the applicants have deliberately made incorrect averment in this O.A. where they have stated that the reasons for this deduction are not known to them and they are not members of Orissa Accounts Association. We, on the other hand, find from the records produced before us that they have applied for membership of Orissa Accounts Association. It is also seen that they have signed the authorisation forms allowing deduction of Rs.3/- from their monthly salary bill towards subscription of that Association. It is, therefore, absolutely wrong on their part to come and say that they are not aware why the deductions are being made.

8. In consideration of all the above, we hold that the Original Application is without any merit and is rejected but without any order as to costs.

9. At the time of admission of the O.A., in our order dated 27.10.1998 such deduction through Acquittance Roll was stayed for a period of fifteen days. This stay order has continued till date. As we have rejected the O.A., the stay order stands vacated. Since during the period of stay deduction from the salary bills for the month of November and December has not been done, it is ordered that the same deduction should be made from the salary to be paid to these applicants in the month of January 1999 along with normal deductions.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN
16.12.98