

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 308/90, 309/90
XXXXXX & 312/90

1. KM Xavier (applicant in OA 308/90)
2. AN Sajeevan (applicant in OA 309/90)
3. BB Prasad & 6 others (applicants in OA 312/90)

DATE OF DECISION 30.7.1990
Applicant (s)

M/s PS Biju & CS Ramanathan Advocate for the Applicant (s)
(counsel for applicants in all these cases)
Versus

Union of India rep. by Secy., Respondent (s)

M/o Defence, GOI, New Delhi & 2 others (respondents in 308,
309 & 312/90)

Mr. V. Krishna Kumar, ACGSC Advocate for the Respondent (s)
(counsel for respondent in OA 308/90)

Ms. KB Subhangamani, ACGSC (counsel for respondents in OA 309/90)
Mr. PK Suresh Kumar, ACGSC (counsel for respondents in OA 312/90)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

Since common facts and question of law are involved in these three cases, they were jointly heard and are being disposed of by this common order.

2. The applicant in OA 308/90 and all the applicants in OA 312/90 are working as Bus Conductors in the Naval School Bus under the third respondent the Motor Transport Officer, INS Venduruthy, Southern Naval Command, Cochin.4. Some of them were engaged for the first time in 1986 and then some of them in 1988. Eversince they are continuously working there as Bus Conductors. The applicant in OA 309/90 was engaged as a Tyreman in the Naval School Bus under the

third respondent with effect from November, 1988. He is also continuing as such. The applicants in all these cases are being paid a consolidated salary of Rs.300/-~~per~~ each per month. The third respondent makes the payment and the attendance roll and salary register are maintained by him.. The case of the applicants is that all of them were appointed against regular vacancies, and that they are doing the work of the regular employees. Their grievance is that, though they were appointed towards regular vacancies, the third respondent treating them as casual workers denies them the benefit of equal wages with the regular employees. Their further grievance is that as they have demanded equal wages as the regular employees, the respondents are threatening to terminate their services. Therefore, the applicants have in these applications prayed that the respondents may be directed to pay each of them salary atleast in the minimum of the scale of the regular employees, that it may be declared that they are entitled to continuous employment, and that their services are not liable to be terminated otherwise than in accordance with the provisions of the Industrial Disputes Act, and that the respondents may be directed to regularise the applicants in service. It is alleged in the application that the Motor Transport Organisation of INS Venduruthy is an industry, and that the applicants are entitle to the protection under the provisions of Industrial Disputes Act.

3. The respondents have resisted the claim of the applicants. They have contended that this Tribunal has no jurisdiction to entertain the claims made in this application because the applicants are neither holding civil posts nor they are employed in connection with the affairs of the state. It is further contended that the claim of the applicants that the motor transport organisation is an industry is misconceived because the motor vehicles sanctioned by the Government for the movement of the defence personnel and stores in the establishment which is controlled by the third respondent by ~~and under no stretch of imagination it can be~~ can be treated as an industry. It has also been contended that as the applicants in these cases were employed as conductors and tyremen for the purpose of providing escort to the children of the naval personnel while going to the naval school in the school bus and also to attend the incidental matters like changing the tyre, cleaning the bus used for the purpose, etc., and that as these persons are engaged by the third respondent only for on behalf of the parents of the children and since payment to them are made only from the ~~non-public~~ fund namely school fund collected from the parents of the children, the applicants cannot at all be considered as persons holding any civil posts or doing anything in connection with the affairs of the state. It is the further case of the respondents that the applicants were never engaged towards any regular

post, and that the claim of the applicants that they should be regularised and that they are entitled to continue in service until their services are terminated in accordance with the Industrial Disputes Act is not sustainable.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced.

5. The first and foremost question that has to be determined is whether the applications are maintainable.

under Section 19 of the Administrative Tribunals Act.

Section 14 of the Administrative Tribunals Act, 1985 reads as follows:

"Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provide in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

(a) 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;

(b) all service matters concerning—
(i) a member of any All India Service; or

(ii) a person (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

(iii) 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 Government;

(c) 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 Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

(EXPLANATION.—For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.)

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different

dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations (or societies).

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or societies) all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation (or society); and

(b) all service matters concerning a person (other than a person referred to in clause (a) or clause (b) of sub-section (1)) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs."

A reading of the Section 14 of the Central Administrative Tribunals Act, above quoted, would make it clear that the Central Administrative Tribunal has jurisdiction, powers and authority to deal with matters enumerated therein only. Let us consider whether the applicants are coming within the purview of the Act by reason of their casual employment under the third respondent. It is now well settled law as has been held by the Full Bench of the

Central Administrative Tribunal in Rehmat Ullah Khan V. Union of India and others reported in (1989) 10 ATC (Mad) Case 656, that a casual labourer/daily rated employee though not holding a civil post is doing civil service of the union, and that any dispute relating to his service matter falls within the jurisdiction of the Central Administrative Tribunal. So if the applicants in these cases were casual employees under the Government, then this Tribunal has got jurisdiction to entertain the applications regarding their grievances. The question is whether the applicants had been working as Casual Labourers under the Government. It is averred in all these applications that the applicants were engaged as casual labourers by the third respondent, The Motor Transport Officer, INS Venduruthy, Southern Naval Command to work as conductors and tyreman in the Naval School Bus owned and operated by the MT Pool of the Southern Naval Command. It is evident from the pleadings and from Annexure-II in OA 308/90 and Annexure-VIII in OA 312/90, the extracts from the daily orders that the applicants were engaged having responded to the daily order issued by the third respondent, The Motor Transport Officer, INS Venduruthy. It is also evident from the extracts of the payment registers Annexure-IV series in OA 308/90, Annexure-II series in OA 309/90 and Annexure-X series in OA 312/90, that the remunerations were paid to the applicants monthly by the third respondent.

From the terms and conditions of services mentioned in Annexure-III in OA 308/90 and Annexure-IX in OA 312/90, it is evident that the applicants were required to work from 7.00 Hrs. till the closing of the school on school days except on Sundays and holidays. When they had to remain in the MT Pool on working days of school, when transport is not required their service could be utilised for cleaning the MT Pool premises. The argument of the learned counsel for the applicants that these documents would clearly indicate that the applicants were employed as Casual Workers, as conductors and tyreman under the third respondent, who is an officer of the Government, and that therefore, they are persons in the casual employment of the Government would appear to be convincing at the first flush. But the learned counsel for the respondents while admitting that the applicants were engaged by the third respondent that their remuneration was disbursed by him, and that they were engaged to work in the buses belonging to the MT Pool of INS Venduruthy, argued that the third respondent was doing all these only for and on behalf of the parents of the students studying in the Naval School for whose benefit, these persons were engaged. It has been contended in the reply statements of the respondents that buses were provided by the MT Pool of the INS Venduruthy for transport of the children studying in the Naval School

that at the request of the association of the parents and teachers, persons were engaged to escort the young children in the school bus to the school and back and also for attending to the changing of tyres, etc., paying them remuneration out of the contributions made by the parents of the children which is maintained as an account known school fund. The learned counsel for the respondents argued that though the applicants were engaged to escort the children and to change the tyre, etc. in the school bus owned by the INS, Venduruthy, they were not engaged or appointed to work on behalf of the Government, but only for the benefit of the children for which they were paid from the non-public fund called school fund, and that, therefore, under no stretch of imagination it can be considered that the applicants were engaged as casual workers in connection with the affairs of the state.

In this connection, the learned counsel for the respondents invited our attention to the decision of the Madras Bench of the Central Administrative Tribunal in OA 170/86 a copy of which is produced as Annexure-R1 in OA 308/90.

That was a case in which persons engaged on casual basis by the Commanding-in-Chief, INS Venduruthy to work as Sports Malis in the sports ground attached to Venduruthy. While they were not absorbed in Government service and were not given the benefits allowed to the Government employees, ^{they} approached the Tribunal claiming that they are entitled to be absorbed in service and also to get

equal wages as that of regular employees of the Government.

The respondents in that case namely, the Chief of Naval Staff, The Flag Officer Commanding and the Commanding-in-Chief, INS Venduruthy contended that ~~the~~ Southern Naval Command stadium was constructed utilising the resources of various amenity funds and other non-public funds, that the applicants in that case were paid only out of the stadium funds which is a non-public fund, and that therefore, the applicants could not be considered as persons employed in connection with the affairs of the state or under the Government. This contention was accepted by the Bench.

It was held that:

"It is specifically stated in the counter affidavit by the second respondent that these applicants were being paid out of what is known as the Southern Naval Command Stadium Fund and even after the taking over there is no change in that respect. In the circumstances just because the stadium has been brought under the charge of MES of its up-keep and maintenance it cannot be said that these applicants have acquired the status of civil servants of the Union or are holders of civil posts under the union."

Accepting the contention raised by the respondents in that case, it was held that the Tribunal has no jurisdiction to entertain the grievance of the applicants in that case because it was not a subject coming within the purview of the Administrative Tribunals Act. The learned counsel for the respondents argued that the position in these cases as identical in that, the applicants are being

paid remunerations out of the non-public fund known as the school fund and not from any funds belonging to the Government of India. To substantiate this contention that the remunerations to the applicants are being paid from the school fund, the school fund account book of INS, Venduruthy was produced by the respondents for our perusal. It is seen from this register and the school bus, bus conductor pay register also produced by the respondents, that all the applicants were paid their monthly remuneration from out of the school fund. The learned counsel for the applicants invited our attention to the decision of this Bench of the Tribunal in OA 328/89 where it was held that persons provisionally engaged as Civilian Mess Bearers, Cook, Dish Washers, Sweepers and Masalages in the nursing school attached to the Indian Naval Hospital Ship, Sanjeevini were Government employees and were directed to be regularised their services within a specified time. It was argued that the applicants concerned in that case and in these applications before us were similarly placed, and that, therefore, applying the same principle to these cases also it is to be held that the applicants in these cases are also employed in the affairs of the state, and that, therefore, this Tribunal has got the jurisdiction. But in paragraph 10 of the order in that case, it has been observed that the applicants in that case were being paid wages from amounts received from the Government of India on the basis of contingent bills.

That makes all the difference. The applicants in OA-328/89 were paid by the Government out of Government fund whereas in these cases the applicants are being paid from a non-public fund and their services, were utilised solely for the purpose of assisting the parents of the children studying in the Naval School for safe transport of the children to School and back. The nature of their work cannot be considered as one touching the business of the state in any way. The learned counsel for the applicants pointed out that in the terms and conditions of employment as is evident by Annexure-III in OA-308/90, the applicants are to remain in the MT Pool and their services can be utilised for cleaning the MT Pool premises and that this would indicate that their services were utilised by the INS, Venduruthy for the purpose other than escorting the children also. This argument does not appear to be sound because as persons engaged in the School Bus, if their services are utilised to clean the pool where the School buses are parked, it cannot be said that it is not connected with their work of escorting the children. Hence, on an anxious consideration of all the facts and circumstances, we are convinced that the applicants in these cases were engaged solely for the purpose of providing escort to the children and also for changing the tyre, etc. of the School bus, getting their remuneration out of a non-public fund, called School fund and that therefore, they cannot be considered as Government servants or persons holding civil posts and that matter concerning their service cannot be considered as a service matter coming within the purview of the Administrative Tribunals Act. We, therefore hold that the Tribunal has no

jurisdiction to entertain the claims put forth in these applications.

6. In view of our finding that the Tribunal has no jurisdiction to entertain the grievance of the applicants who are neither Government servants nor employed in the affairs of the State, we are not going into the other contentions regarding the applicability of the Industrial Disputes Act etc. In the result, in view of what is stated in the foregoing paragraph, the application is dismissed without any order as to costs.


(AV HARIDASAN)

JUDICIAL MEMBER

30/7/90


(SP MUKERJI)
VICE CHAIRMAN

30.7.90

30-7-1990

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