OA 962/96

OA 1055/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

ORDER IN O.A.Nos. 962/96
O.A.No. 1006/96
O.A.No. 1026/96
O.A.No. 1055/96
O.A.No. 108/97
O.A.No. 109/97
Tr.A. 1/95
O.A.No. 1361/95

Duplicate for IInd set

DATED : THIS 28th DAY OF JULY, 1997

CORAM : Hon'ble Shri B.S. Hegde, Member(J)
Hon'ble Shri M.R. Kolhatkar, Member(A)

O.A.No. 962/96:

1. Pandit Punjaji Salve
r/at. Salve Building
Nalanda Society, Jail Road,
Nasik Road.

2. Ravindra Purushottam
Panchakshari, R/at
House No.2157,
Somwar Peth
Opp. Ajay S.T.D. Booth
Service, Nasik 422001.

3. M. Krishnan Mari
R/at. P-1/5 Nisarg
Govind Housing Society
Lokhande Mala, Jail road,
Nasik Road

4. Janardhan Kisan Aher
R/at Suwarn Cooperative
Housing Artillery Centre
Road, Deolali Gaon,
Nasik Road.

5. Ramprabhu Bhikaji Wani
R/at. 4606-D, Makhmalabad Road
Panchavati, Nasik

6. Suresh Ramchandra Pawar
R/at. Kamal Niwas
M.G.Society, Shikharewadi
Nasik Road,

All working as Assistant Inspector
at the Central Stamp Depot,
Nasik Road
(By Adv. Mr. G K Masand)

..Applicants
in OA No.962/96

V/s.

1. Union of India
   through the Secretary
   Ministry of Finance
   Currency & Coinage
   North Block, New Delhi

2. General Manager
   Central Stamp Depot,
   India Security Press,
   Nasik Road

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondent

O.A. No. 1006/96:

1. S C Puhan
   R/at.E-16, ISP Estate
   Staff Quarters
   Nashik Road, Nasik 422101

2. R V Pawar
   R/at. F/17 ISP Estate
   Staff Quarters
   Nashik Road, Nasik 422101

3. B V Durgaprasad
   R/at. New Type II
   Staff Quarter No.1564
   Nehru Nagar, Nasik Road

4. R S Pal
   R/at. Sham Vihar
   Anand Road
   Deolali Camp
   Nasik 422401

5, S. Das
   R/at. E-37
   ISP Estate
   Nashik Road

6. S K Mishra
   R/at. Quarter No.F/16
   ISP Estate, Nashik Road
   Nasik 422101

7. P S S N Durgaprasad
   R/at. Quarter No.E-29
   ISP Estate, Nasik Road

8. J K Chaudhary
   Flat No.4
   Star Apartment
   Bela D'Souza Road
   Jail Road, Nasik Road

9. R. Palani Samy
   Quarter No.1850
   Type II Nehru Nagar
   Nasik Road

10 S V Nirantar
2046 Nehru Chowk
Nasik 422001.

11 D M Wadgaonkar
9 Neel Nandini
Gandharva Nagari
Nasik Road

12 S P Kadepurkar
N-2/14 Sanmitra Society
CIDCO, Nasik 422009

13 P K Mansingh
ISP Estate
Staff Quarter E-34
Nasik Road

14 R K Sonkar
Flat No.9
Sangam Apartment
Om Nagar
Nasik Road

15 K M Vaidya
Pitru Safalya
Near Chide Mala
Nasik Road

16 R G Khanna
5 Dhiraj Society
Jail Road
Nasik Road

17 S K Pandey
Shram Saflya
Plot No.37
Godavari Society
Jail Road
Nasik Road
(By Adv. Mr.G K Masand)

..Applicants
in OA No.1006/96

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Economic Affairs
Currency & Coinage Division
North Block, New Delhi

2. The General Manager
India Security Press
Nasik Road

3. General Manager
Currency Note Press
Nashik Road
(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel)

..Respondents

O.A.No. 1026/96:

1. A M Patil

2. N A Bhusare

3. P G Nimbalkar

4. B Y Shinde

5. A T Sonawane

6. P B Kulkarni

7. H M Gadakh

8. R A Gavhale

9. J K Amesar

10 V N Rokade

11 R P Gaidhani

12 R B Bakare

13 R. Shanmugam

14 D B Malve

15 K W Salve

16 U A Dandge

17 N D Saundankar

18 J R Telore

19 V G Jamkhedkar

20 T M Gupta

21 M S Tonape

No.3 to 21 working as Assistant Inspector Control of India Security Press, Nasik. No. 3 has since retired on 31.7.1996 on reaching the age of superannuation

(By Adv. Mr.G K Masand)

..Applicants
in OA No.1026/96

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Economic Affairs
Currency & Coinage Division
North Block, New Delhi

2. The General Manager
India Security Press
Nasik Road

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondents

O.A.No. 1055/96:

1. B B Badhe
Panchak
Sonar Chawl, Jail Road
Nasik Road, Dist. Nasik

2. R M Patil
IPS Staff Quarter No.F-43
Nashik Road, Dist Nasik

(By Adv. Mr. G K Masand) ..Applicants in
O.A.No. 1055/96

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Economic Affairs
Currency & Coinage Division
North Block, New Delhi

2. The General Manager
India Security Press
Nasik Road

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondents

O.A.No. 108/97:

O.P. Khanna
Works Engineer
Currency Note Press
Nashik r/at.
A-6 ISP Estate
Nasik Road 422101

(By Adv. Mr. G K Masand) ..Applicant
in O.A. No. 108/97

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Economic Affairs
Currency & Coinage Division
North Block, New Delhi

2. The General Manager
India Security Press
Nasik Road

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondents

O.A. No. 109/97

V K Bhalerao
Sub Fire Officer
Currency Note Press
Nasik Road
R/at. Lumbini Nagar
Nane Gaon Road
Devlali Camp 422401

(By Adv. Mr. G K Masand) ..Applicant
in O.A.No. 109/97

1. Union of India
through Secretary
Ministry of Finance
Department of Economic Affairs
Currency & Coinage Division
North Block, New Delhi

2. The General Manager
India Security Press
Nasik Road

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondents

TRANSFERRED APPLICATIOIN No. 1/95:

1. M N Gholap

2. R M Aher

3. P. Mahadevayya

4. S B Adke

5. Dr. H M Datar

6. Smt. T. Pillai

7. N N Sardesai

8. A K Biswas

(By Adv. Mr. G K Masand) ..Applicants
in Tr.A. No. 1/95

V/s.

1. Union of India
   through Secretary
   Ministry of Finance
   Department of Economic Affairs
   Currency & Coinage Division
   North Block, New Delhi

2. The General Manager
   India Security Press
   Nasik Road

3. The General Manager
   Currency Note Press
   Jail Road, Nasik Road,
   District: Nasik

(By Adv. Mr. V S Masurkar,
Central Government Standing
Counsel) ..Respondents

O.A. No. 1361/95:

1. N A Tejwani
   Assistant Engineer
   Postal Civil Division
   now Shri V P Shrivastava
   holding the post of
   Assistant Engineer
   Udhyog Bhavan
   Near Bitco
   Nasik Road, Nasik

2. P.K. Sharma
   Executive Engineer
   now his successor
   Shri C S Satpute
   Executive Engineer
   Postal Civil Division
   Udhyog Bhavan,
   Near Bitco, Nasik Road
   Nasik

(By Adv. Mr. P M Pradhan,
Central Government Standing
Counsel with Adv. Mr. S.S.
Karkera) ..Applicants
in O.A.No.1361/95

V/s.

1. The Labour Enforcement Officer
   & the Authority under the
   Minimum Wages Act, 1948 and
   Regional Commissioner (Central)
   Nasik

2. Shri B P Shinde, Watchman

3. Shri R K Adav, Watchman

Working under Postal Civil
Division, Nasik Division,
Nasik

(Respondent No.1 by Adv. Mr.
A.L. Kasturey)

..Respondents

ORDER
[Per: B S Hegde, Member(J)]

1. Heard the Counsel for the parties. In all these applications, excepting O.A.No.1361/95 the applicants are seeking payment of overtime allowance under section 59 of the Factories Act for the period when they worked in excess of 8 hours per day or 48 hours per week, which amount is restricted to the basic pay of the applicants after they reached the pay of Rs.1900/- and stopped the payment of over time after they reached the basic pay of Rs.2200/-. O.A.No. 1361/95 is filed by the Union of India against the order dated 17.8.1993 passed by the Regional Labor Commissioner (Central) and Authority under the Minimum Wages Act, 1948 under section 20(2).

2. In all these Applications, excepting OA No.1361/95, the common question of law involved is whether the applicants are entitled to Overtime Allowance according to Section 59 of the Factories Act. In OA No.1361/95 the question involved is regarding payment of minimum wages. The question of jurisdiction of this Tribunal to entertain these applications has to be decided. Therefore, all these applications have been heard together and are being disposed of by a common order.

3. It may be observed that the matters were originally before a Single Bench Member, but they have come before the Division Bench on reference being made by the Single Bench to decide the issue of law involved as to jurisdiction. It could be useful in this connection to refer to the orders of reference. The first order of reference was in O.A.No.1361/95 passed on 29.8.96 which reads as below:

> "Mr. S. S. Karkera for the applicant and Mr. A.L. Kasturey states that keeping in view the judgment of the Supreme Court in the case of Krishan Prasad Gupta Vs. Controller, Printing & Stationary, 1996 SCC(L&S) 264 and as Minimum Wages Act is a corresponding law for the purpose of Section 28 of A.T. Act, therefore, this Tribunal has no jurisdiction to entertain the O.A. Mr. S.S. Karkera opposes the prayer. According to him Krishan Prasad Gupta's case decided the issue in relation to appeal under Payment of Wages Act read with I.D. Act and not in relation to Minimum Wages Act. Further no appeal is provided under Minimum Wages Act whereas appeal is provided under Payment of Wages Act.
>
> As this is an important issue pertaining to the jurisdiction of the Tribunal not only of Single Bench but also of Division Bench, it is fit and proper that this matter is referred to Division Bench for decision of the preliminary point raised about jurisdiction of the Tribunal.
>
> Let the matter be referred to Division Bench.
> ...."

The Second Reference was made vide order dated 24.10.96 read with order dated 18.12.96 in O.A.Nos. 1026/96 and 1055/96. The orders are identical and order in O.A.No.1055/96 reads as under:-

ORDER DATED 24.10.1996:

"Heard Shri G.K. Masand, Counsel for the applicant.

The Learned Counsel for the applicant submits that prior to the introduction of Central Administrative Tribunal, the applicant is to approach the High Court for getting the Overtime Allowance under the provisions of Factories Act. When the querry was made to the learned Counsel for the applicant as to whether the provisions under Factories Act would amount to be a corresponding law in view of the recent decision in K.P.Gupta's case, the answer given by the Learned Counsel for the applicant was in the negative. According to him, this pertains to service matters, which is covered under Section 14 of the Administrative Tribunals Act.

However, he did not give any convincing answer regarding - whether the provisions under the Factories Act would amount to corresponding law, Industrial Disputes Act or any other industrial law. This requires to be clarified.

However, in the facts and circumstances of the case, issue notice to the respondents to file reply regarding jurisdiction of the Tribunal and the implication of K.P.Gupta's case in this regard.

Put up for Admission Hearing on 18.12.1996.

Copy of this order be given to the parties."

ORDER DATED 18.12.96:

"Shri Tulaskar for Shri G.K. Masand, counsel for the applicant. Ms. Shenoy for Shri V S Masurkar, counsel for the respondents.

Respondents seek time to file reply. Time granted.

List the case on 23.12.96 before the Division Bench, as similar matters regarding the question of jurisdiction has been fixed for hearing on that date."

We have first dealt with the contention relating to Factories Act in the O.A. other than O.A. No.1361/95.

4. The contention of the learned counsel for the applicants Mr. Masand is that a similar application filed by other employees has been allowed by the Tribunal. The applicants are identically placed as applicants in O.A.No.267/95 (Single Member Bench) decided on 18.12.1995.

5. It is an admitted fact that the applicants are working as Assistant Inspector in the pay scale of Rs.1350-2200. The contention of the applicants is that the respondents have been paying overtime allowance to all the employees at double the rate whenever they performed duties in excess of 8 hours a day or 48 hours per week till they reached the basic pay of Rs.1900/- and thereafter the over time allowance is restricted to the basic pay drawn by the employee and when he reaches the basic pay of Rs.2200/- the overtime allowance is completely stopped. It is further contended by the applicants that Supervisors of Currency Note Press (CNP) who are working in the pay scale of Rs.2000-3500 had filed O.A.No.761/88 claiming payment of overtime at double the rate in accordance with the provision of Section 59 (1) of the Factories Act. The order passed by the Tribunal (Division Bench) on 6.1.1993 was challenged by the Respondents in the Hon'ble Supreme Court by filing a Special Leave Petition and the same was dismissed by the Apex Court and upheld the order of the Tribunal. Nevertheless the respondents choose to implement the said judgment only in the case of the applicants in

O.A.No.761/88/88 which resulted in filing of a number of applications by the employees of different departments of India Security Press, Currency Note Press and Central Shop Depot. Though direction was given by the Tribunal to the respondents to pay over time allowance strictly in accordance with the provisions of section 59(1) of the Factories Act without any ceiling either to the basic pay or otherwise, the respondents did not extend that benefit to others who are similarly situated and has applied for only those who approached the Tribunal. This according to the applicants is arbitrary and contrary to the provisions of Articles 14 and 16 of the Constitution of India. Therefore, the applicants have sought for similar relief as was given to applicants in O.A. No. 761/88 and O.A. No. 267/95.

6. Mr. G K Masand, counsel for the applicants brought to our attention the various provisions of Sections 14, 28 and 3(q) of the Administrative Tribunals Act, 1985, which are reproduced below:

> 14. JURISDICTION, POWERS AND AUTHORITY OF THE CENTRAL ADMINISTRATIVE TRIBUNAL - (1) Save as otherwise expressly provided 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 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.

28. EXCLUSION OF JURISDICTION OF COURTS EXCEPT THE SUPREME COURT UNDER ARTICLE 136 OF THE CONSTITUTION - On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except -

(a) The Supreme Court; or

(b) any Industrial Tribunal, Labor Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force,

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

3.(q) "Service matters", in relation to a person, means all matters relating, to the conditions of

> his service 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, as the case may be of any Corporation or Society owned or controlled by the Government, ..."

According to the learned counsel for the applicants S.14 provides for jurisdiction relating 'service matters' and therefore, 'remuneration' payable to employees would come within S.3(q) which includes allowances and overtime allowances, because over time allowance payable under any law does come under service matter. Therefore, this dispute is within the competence and jurisdiction of the Tribunal to deal with. In this connection he draws our attention to the decision rendered by the Jabalpur Bench of the Tribunal in UNION OF INDIA AND ANOTHER Vs. SIVARAM AND ANOTHER [1988] 7 A.T.C. 28, while interpreting Sec. 3(q), the Tribunal held that claim of overtime allowance is a service matter and also an industrial dispute under the Industrial Disputes Act, 1947. The High Courts are debarred from deciding service matters except those pending before them in appeal - hence, writ petitions filed against the orders of the industrial tribunal on service matters will stand transferred to the C.A.T.

7. The second contention of the learned counsel for the applicant is that Section 28 confers concurrent jurisdiction whereby the jurisdiction conferred u/s.14 of the Administrative Tribunals Act, 1985 is not divested. Therefore, in service matters the same can be dealt with by two courts and the choice is left to parties to choose the forum. That being the legal position the

jurisdiction under Section 14 is not ousted by virtue of saving clause under section 28 of the A.T. Act. Since the over time payment claim is filed under section 19 of the A.T. Act the Tribunal has the jurisdiction to entertain such petition. Further u/s.29 prior to 1.11.85 where appeals have not been filed before the competent forum in such a situation, they are allowed to approach the Tribunal after the Tribunal came into being. It is also argued that once the position has been concluded by the judgment delivered by this Tribunal, there is no way the respondents can escape their liability in not paying to others who are similarly placed.

8. In support of his contentions the learned counsel for the applicants draws our attention to paras 17, 22, 38 and 40 of a recent decision of the Supreme Court in KRISHAN PRASAD GUPTA Vs. CONTROLLER, PRINTING & STATIONERY, JT 1995(7) S.C.522. Therefore, he submits the case of KRISHAN PRASAD GUPTA (supra) deals with where an appellate forum is provided under the Act such as Payment of Wages Act, it has to be dealt as under the proper forum not before the Central Administrative Tribunal. Whereas in instant case Factories Act does not provide any machinery for payment of overtime allowance that has to be determined in terms of Industrial Disputes Act. Since it pertains to service matters of employees the employees grievance in this respect can be adjudicated before this Tribunal. There is no scope of

ambiguity except agitating their grievance before the Central Administrative Tribunal.

9. Against this, the learned counsel for the respondents Mr. V S Masurkar, raised many preliminary objections and of maintainability of these Applications on the ground of jurisdiction. Firstly he contended that the joint application is not maintainable because the applicants are differently situated and not in the same grade or category. Secondly many of the applicants have not furnished material particulars in their representation and in the absence of relevant material particulars such as period for which he or she is entitled for over time, the amount of arrears etc., it is not possible to deal with such vague claims. Since most of the applicants have accepted the payments already made without any objection, they do not have any cause of action to agitate the said relief once again. Thirdly, in order to claim over time allowance, they have to establish their case before the Central Government Labor Court and this Tribunal will have no jurisdiction to try and entertain the present applications because ID Act is a corresponding law in view of KRISHAN PRASAD GUPTA. Further it is emphasized that applicants draw salary and not wages beyond the limit of Rs.1600/- as provided under section 64(1) of the Factories Act. The applicants hold the post of Assistant Inspector drawing pay in excess of Rs.1600/- per month and the nature of work performed by

them is supervisory in nature and thus they cannot be treated as workers. Further it has been brought to our attention that the present legal position is that if a person is to be treated as 'worker' within the meaning of Factories Act, 1948, it applies to 'Workers' only and the definition of 'manufacturing process' have to be looked into u/s. 70 of the Bombay Shops and Establishments Act, in that connection the Apex Court has held in WORKMEN OF M/s. DELHI CLOTH GENERAL MILLS, Ltd., V/s THE MANAGEMENT OF M/s. DELHI CLOTH AND GENERAL MILLS, Ltd., AIR 1970 SC 1851, that the liability for payment of double over time as per S.59 of the Factories Act to the persons who are not strictly falling within the definition of 'worker' in section 2(1) of the Factories Act has ceased with effect from the date of amendment of section 70 of Bombay Shops and Establishments Act in 1986. The learned counsel for respondents submits that, therefore, under no circumstances the applicants can be treated as 'workers' within the meaning of the Factories Act and thus not entitled for double overtime allowance as per section 59 of the Factories Act. The applicants have not availed of all the remedies available to them under the relevant service rules for redressal of their grievances and therefore the application is premature in view of section 20 of Administrative Tribunals Act, 1985. Ld. Counsel for respondents states that no limitation under the I.D.Act is provided whereas under the Administrative Tribunals Act there is limitation and since these

applications are not filed within the stipulated period they are not to be entertained. Learned Counsel for respondents argued that payment of overtime will have All India effect as those who are drawing less than Rs.1,600/- salary are governed under Industrial Employees (Standing Orders) Act 1946 whereas those who are drawing more than Rs.1600/- are governed under the C.C.S. (C.C.A.) Rules. Therefore this Tribunal will not have jurisdiction to entertain these applications in view of KRISHAN PRASAD GUPTA (supra) as the facts are born on I.D.Act it has to be treated as corresponding law. The applicants herein were paid over time allowance without any limit upto reaching the basic pay of Rs.1900/- however they having been entrusted with the duties of supervisor, they cannot be treated as workmen within the meaning of S.2(1) of the Factories Act. The limit of their basic pay was fixed as far back as 1.5.1974 by Government Order and they are challenging the same in the year 1996 after a lapse of 18 to 20 years. The contention of the learned counsel for the respondents is that that by itself shows that they were satisfied with the over time paid to them but by showing a judgment rendered by the Tribunal in O.A.No. 761/88 and O.A. No. 267/95 the applicants herein have filed this O.A. claiming similar relief. It is a well settled principle that the judgments and orders of the Courts in other cases do not give cause of action and cause of action has to be reckoned from the actual date as held by the Supreme Court in BHOOP SINGH Vs. UNION OF INDIA, JT

1992(3) SC 322. The learned counsel submits that the SLP filed by the respondents against OA No.761/88 was dismissed by the Supreme Court at admission stage without laying down any principle or guideline and hence it cannot be taken as law laid down by the Supreme Court and it would apply to the facts of that case and is not having binding force and the same cannot be treated as a precedent.

10. Having gone through the Apex Court decision in KRISHAN PRASAD GUPTA (supra) it is not appropriate on the part of the Tribunal to assume jurisdiction and decide the matter which will go to the root of the problem. The applicants are paid more than Rs.1900 and are entrusted with duties of supervisor they cannot be treated as 'workmen' within the meaning of S.2(1) of Factories Act. Having regard to S.64 read with Rule 100 of Maharashtra Factory Rules, the applicants have been declared by their competent authority as supervisor and as such exempted from the preview of S.59(1) of the Factories Act. Further the payment of over time allowance is not to be treated as a condition of service.

11. Having heard the arguments of both the counsel, the question for determination is after KRISHAN PRASAD GUPTA case, whether the Tribunal will have jurisdiction to entertain the matters arising out of the industrial disputes. The Full Bench of the Tribunal sitting at

Hyderabad in A. PADMAVALLEY & OTHERS Vs. C.P.W.D. & TELECOM, CAT(FB) Vol.II, 334, decided on 30.10.1990 has concluded as under:-

> "The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the Labor Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication.

The Apex Court has held that the 'Authority' constituted u/s.15 and the appellate authority u/s. 17 of the Payment of Wages Act fall within the exception indicated in S. 28 of the A.T. Act, 1985 and the payment of wages is covered by the connotation of corresponding law. In other words, position as was prevailing before the A.T.Act came into force has been restored by the Supreme Court in regard with the appeals u/s.17 of the Payment of Wages Act. This by implication excluded the jurisdiction of the Tribunal of entertaining an application u/s.19 of the A. T. Act, 1985 against award by the prescribed authority. Since the point of jurisdiction goes to the heart of the matter, it is not advisable to assume jurisdiction which goes contrary to the decision of the Apex Court in KRISHAN PRASAD GUPTA's case. All those

decisions rendered by this Tribunal were rendered without KRISHAN PRASAD GUPTA's case having been brought to notice of Tribunal, and therefore, having been apprised of the Apex Court decision it is not appropriate to assume jurisdiction.

12. The judgment in KRISHAN PRASAD GUPTA is also to be read with the decision of the Hon'ble Supreme Court in SURAJ RAM Vs. UNION OF INDIA & ANR., in Civil Appeal No.3370 of 1996 arising out of Special Leave Petition(C) No. 28452 of 1995, decided on February 12, 1996. The relevant portion reads as under:

> "The Central Government Labour Court by the award dated October 8, 1992 directed the respondents to pay a sum of Rs.7,826/- as part of unpaid wages for the period from September 4, 1975 to February, 1980. The respondents challenged the award of the Labour Court before the Central Administrative Tribunal. The Tribunal by the impugned judgment dated December 15, 1993 set aside the award and rejected the claim of the appellant. This Court in KRISHAN PRASAD GUPTA Vs. CONTROLLER, PRINTING AND STATIONERY, 1996(1) SCC 69 has held that the Central Administrative Tribunal has no jurisdiction to entertain an application under Section 19 of the Central Administrative Act, 1985 against an award/order of the Labour Court. Even otherwise the Tribunal was not justified in setting aside the award on merits.
>
> "We allow the appeal, set aside the impugned judgment of the Central Administrative Tribunal and restore that of the Labour Court. No Costs."

13. Our reply to the reference in the cases under the Factories Act, therefore, is that the Factories Act is a

corresponding law in terms of S. 28(b) of the Administrative Tribunals Act, 1985 and therefore, this Tribunal has no jurisdiction to deal with the claims of Overtime Allowance under the same.

14. At this stage we wish to consider the contention raised by Shri G K Masand, learned Counsel for the applicants that in the very first case relating to Factories Act viz., the decision in O.A. No.761/88 A.P. PADWAL & ORS. Vs. UNION OF INDIA & ORS., decided on 6.1.1993 was rendered by a Division Bench of the Tribunal and therefore, by a coordinate Bench and as such if the Tribunal is inclined to differ from the same, the Tribunal is bound to make a reference of the matter to a Larger Bench and cannot decide the matter. We are not impressed by this submission for the simple reason that the judgment in A P PADWAL's case was rendered when the Hon'ble Supreme Court's judgment in KRISHAN PRASAD GUPTA's case was not available. Now that the Supreme Court has laid down the law relating to Tribunal's jurisdiction, the Doctorine of Precedent does not bind us so for as the judgment in A P PADWAL's is concerned and we reject the request for reference of the matter to the Full Bench.

<u>O.A.No. 1361/95:</u>

15. So for as this O.A. is concerned Minimum Wages Act, 1948 is a legislation providing for minimum rate of wages in certain employments. The claims under the Act can be

made u/s.20 and an appropriate Government has to appoint an officer to hear and decide all claims arising out of the Minimum Wages Act. No machinery has been provided in the Act for hearing the appeal against the decision taken by the designated officer. It is, therefore, evident that the provision of S.33(p) of the Industrial Disputes Act will come into play and that Minimum Wages Act also is a corresponding law for the purpose of S.28(b) of Administrative Tribunals Act, 1985.

CONCLUSION:

16. We, therefore, consider that both the Factories Act, 1948 and the Minimum Wages Act, 1948 are corresponding law for the purposes of S.28(b) of Administrative Tribunals Act, 1985 and therefore in terms of Supreme Court judgment in K.P.GUPTA read with SURAJ RAM, the Tribunal has no jurisdiction to deal with the applications making out grievances under the same and in particular the Overtime Allowance under the Factories Act and minimum wages under the Minimum Wages Act.

17. In the normal course we would have passed on the matter to the Single Bench to take a decision, but in the facts and circumstances of the case remanding the case to Single Bench would add an avoidable additional stage to

the course of protracted litigation. We, therefore, ourselves dismiss the Applications for want of jurisdiction.

18. Before parting with the cases we wish to make observations with regard to the status of judgments rendered by this Tribunal in the earlier matters viz., OA No.761/88 A.P.PADWAL & ORS. Vs. UNION OF INDIA & ORS, decided on 6.1.1993, which was the first judgment in this regard, and which was followed by several judgments including the judgment in O.A.No.63/95, P.P.KOKANE & ORS. Vs. MINISTRY OF FINANCE, decided on 18.12.1995. We wish to clarify that in so for as PADWAL judgment is concerned the same was rendered before the pronouncement of K.P.GUPTA's judgment. The judgment in K.P.GUPTA was rendered on 18.10.95 and it may be that chronologically some of the judgments pronounced by this Tribunal may have been post-K.P.GUPTA's case. However, the previous judgments of the Tribunal granting relief do not become illegal. Departments are bound to give effect to them. The effect of our present judgement is that in future this Tribunal except for any subsequent legal developments to the contrary, will not entertain claims relating to payment of Overtime Allowance under Factories Act or appeals under Minimum Wages Act for want of jurisdiction. Moreover, the right to overtime allowance or the right to minimum wages perse is not affected. We are merely saying that the remedy for enforcing those rights would lie elsewhere and not before this Tribunal.

19. The Applications are therefore dismissed with no order as to costs.

(M.R. Kolhatkar)
Member(A)

(B.S.Hegde)
Member(J)

trk