O.A. 1148/96

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

ORDER IN O.A.Nos. 1148/96; 1230/96 AND 550/97

DATED : THIS Pronounced a 15th DAY OF DECEMBER, 1997

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri P P Srivastava, Member(A)

O.A. No.1148/96

Vithal Gopal Kadam,
Junior Supervisor
in India Security Press,
Nashik Road and residing
at Kadam Mala,
Behind Andha Shala,
Nashik Road 422101
(By Adv. Mr. G K Masand) ..Applicant in O.A.No.1148/96

V/s.

1. Union of India through the
Secretary in the
Ministry of Finance
Department of Economic Affairs
Currency and Coinage
North Block
New Delhi

2. The General Manager
India Security Press
Nashik Road
(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel) ..Respondents

O.A.No. 1230/96

1. Shri Arun Krishnarao Tapase
Deputy Works Engineer
Currency Note Press
11 Nalanda Cooperative Housing
Society, Jail Road,
Nashik Road

2. Shri Deshmukh Sukhadeo Mahadu
Deputy Works Engineer, ISP.
Type III, No.1611
ISP Staff quarters,
Nehru Nagar,
Nashik Road 422 101

3. Shri Malhotra Surinder Pal
Deputy Works Engineer, ISP,
New Type II, No.8
ISP Hospital Colony
Nashik Road 422101

4. Shri Tekale Rama Mohan Rao
Deputy Works Engineer CNP
Vrindavan, Brahmagiri Society,
Jail Road, Nashik Road

5. Shri Shimpi Pradipkumar Ambadas
Deputy Works Engineer CNP
N-10, Type N-3/23/3
New CIDCO Ganesh Chowk
Nashik 9
(By Adv. Mr. D V Gangal) ..Applicant in O.A.No.1230/96

V/s.

1. Union of India through the
Secretary in the
Ministry of Finance
Department of Economic Affairs
Currency and Coinage
North Block
New Delhi

2. The General Manager
India Security Press
Nashik Road

3. The General Manager
India Security Press
Nashik Road 422101
(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel) ..Respondents

O.A.No. 550/97
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1. Shekhar Kumar Ghosh
Flat No.7, 'Gulshan'
Jail Road
Nashik Road 422101

2. Barun Kumar Roy
Gananayak Cooperative
Housing Society Ltd.,
Flat No.3, plot no.18A
Anand Nagar,
Jagtap Mala
Nashik Road 422101
(By Adv. Mr. G K MasandP ..Applicant in O.A.No. 550/97

V/s.

1. Union of India through the
   Secretary in the
   Ministry of Finance
   Department of Economic Affairs
   Currency and Coinage
   North Block
   New Delhi

2. The General Manager
   India Security Press
   Nashik Road
(By Adv. Mr. V S Masurkar,
Central Govt. Standing Counsel) ..Respondents

ORDER

[Per; R G Vaidyanatha, Vice Chairman]

1. These are three cases filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the applications. Since the question involved pertains to jurisdiction of the Court we made an order in one of the cases directing any Advocate or party can appear before the Court to argue the question of jurisdiction. We have heard Learned Counsel Mr. G K Masand, Mr. D V Gangal, Mr. V S Masurkar. We have also heard Mr. Suresh Kumar, learned Advocate who appeared as amicus curiae, who is also in the panel of certain Central Government Departments as Counsel.

2. In all these cases the applicants are working in India Security Press at Nashik Road, Nashik. They are entitled to Over Time Allowance (OTA). But as per the service rules OTA is restricted to the basic pay if an official is getting basic pay of Rs.1,900/- or more. As

per service rules officials who have crossed basic pay of Rs.2,200 per month are not entitled to OTA at all. It is stated that under section 59 of the Factories Act there is no restriction of the OTA on basic pay. Under that section workmen are entitled to get OTA at double the rate subject to the hours of work mentioned in that section. Therefore, the applicants have approached this Court for a direction to the Respondents not to restrict the OTA with reference to the basic pay. On the other hand they should be directed to pay OTA at double the rate as provided in section 59 of the Factories Act.

3. The stand of the Respondents is that the applicants who are working in the Security Press are not workmen, but they are officers of the Government of India holding civil posts. Hence they are not entitled to claim any relief under section 59 of the Factories Act. It is asserted that the applicants are entitled to OTA as per the service rules issued by the Government under Article 309 of the Constitution of India. Hence this Court has no jurisdiction to grant any relief under the Factories Act and hence the present applications are not maintainable.

4. At the time of arguments on the preliminary question about the maintainability of the applications, the learned Counsel for the Applicants contended that the applicants are entitled to higher rate of OTA without

reference to basic pay under section 59 of the Factories Act. This Tribunal has jurisdiction to consider any service matter pertaining to the Central Government employees including OTA. Since no forum is created under the Factories Act for adjudication of a dispute of this type, it was argued, that this Tribunal has jurisdiction to grant the relief. On the other hand the learned counsel for the respondents Mr. Masurkar and Mr. Suresh Kumar, who appeared as amicus curiae, contended that OTA provided under section 59 of the Factories Act can be claimed by industrial workers before the Industrial Court or Labour Court constituted under the Industrial Disputes Act. It is further argued that in view of the recent decisions of the Apex Court the applicant are holding civil posts and therefore they cannot claim any relief under the Industrial Law. Though this Court has jurisdiction to decide a service matter, it was argued, that the applicants cannot claim relief under section 59 of the Factories Act and the present applications are not maintainable.

5. In the light of the arguments addressed before us the point that falls for decision is whether the present applications claiming enhanced OTA under section 59 of the Factories Act are maintainable before this Tribunal or not.

6. There cannot be any dispute at all that this Tribunal has power to decide all service matters of Central Government employees including the disputes regarding salary and allowances. Allowances may be of any type and it naturally includes OTA. If under the service rules the applicants are entitled to certain rate of OTA and if it was denied by the department, then there is no difficulty to hold that an application filed before this Tribunal claiming OTA under the service rules is maintainable. But here the applicants are not raising any dispute regarding their right to claim OTA under the service rules but they are claiming OTA under section 59 of the Factories Act.

7. Whether employees of the Government irrespective of the department in which they work, are workmen entitled to relief under the Industrial Law is the question mooted before us. In our view the question is no longer res-integra and is covered by series of recent decisions of the Apex Court where it has been held that persons working in different departments of the Government are holding civil posts and they cannot claim any right under the industrial law.

8. Even the learned counsel for the applicants never argued that the applicants are not holding the civil posts. One of the learned counsel appearing for the applicants relied on 1997 SC SLJ 188 (MTNL case) where

the Supreme Court held that the employees of the Telecommunication Department are holding civil posts and they cannot approach the Labour Court under the Industrial Disputes Act, but they should approach the Central Administrative Tribunal pertaining to any service dispute.

9. In this connection we may point out that in a recent judgment a Division Bench of this Tribunal by its order dated 28th July 1997 in O.A.No. 962/96 and connected cases held that this Tribunal has no jurisdiction to grant relief under the Factories Act regarding OTA. In view of the well settled law of precedents we are bound by this judgment. However, if we disagree with this judgment on any ground then we cannot take a final decision but to refer the matter to a Full Bench. After going through the said judgment, in the light of the arguments addressed before us, we are in respectful agreement with the observation in that judgment that the relief under Industrial Law cannot be agitated before the Central Administrative Tribunal. We will presently refer to some of the decisions of the Apex Court in support of our conclusion.

10. In <u>KRISHAN PRASAD GUPTA Vs. CONTROLLER, PRINTING & STATIONERY,</u> [JT 1995(7) SC 522] the question was whether appeal against the order of competent authority under the Payment of Wages Act lies to the District Judge or to the

Central Administrative Tribunal. After referring to the provisions of the Administrative Tribunals Act and in particular Sections 14 and 28 of the Act it was observed that the jurisdiction of the Tribunal under the A.T.Act is excluded in so for as matters pertaining to corresponding law mentioned in Section 28 of the Act. It is clearly observed in para 22 of the reported judgement that the jurisdiction of the Industrial Tribunal, Labour Court or other authorities under the Industrial Law remains unaffected.

11. Under the Administrative Tribunals Act this Court can decide all service matters of the Central Government employees including the present dispute about the OTA. But we are trying to point out that this Tribunal cannot decide any right of the employees which flows from the Factories Act or any other Industrial Law. That is the clear position of law as explained by the Supreme Court in K.P. GUPTAs case.

12. There are number of decisions of the Apex Court in 1996-97 where it has been consistently held that the officials working in number of establishments like Telecommunication services, Postal Services etc., are not workmen but they are officers holding civil posts and therefore they have to approach the Central Administrative Tribunal in respect of their grievances. In that way these applications filed by the applicants

are maintainable in this Court since the applicants in these applications are holding civil posts and they are employees of the Central Government. But the question is whether they can claim any relief before this Tribunal either under the Factories Act or Industrial Law by filing an application before this Tribunal. Our answer to this question is in the negative. We would presently refer to some of the decisions of the Apex Court bearing on this point.

13. In JT 1996(2)(SC) 457 SUB-DIVISIONAL INSPECTOR OF POST, VALKAM & ORS ETC. Vs. THEYYAM JOSEPH ETC., the question was about Postal employees are holding civil posts or not. There a workman under the Industrial Disputes Act filed a case before the Industrial Court challenging the order of termination for not complying with Section 25-F of the Industrial Disputes Act. The Industrial Tribunal quashed the order of termination since the order was not in compliance with S.25-F of the Industrial Disputes Act. The order was challenged before the Supreme Court. The Supreme Court held that the employee was holding a Civil post and was governed by the service rules and therefore his remedy for challenging the order of termination is before the Central Administrative Tribunal and not before the Industrial Court. Therefore, the question will be not whether the order of termination is is bad under section 25-F of I.D.Act but the question will be whether the order of

termination is contrary to service rules issued under Article 309 of the Constitution of India. It therefore follows from this decision that if there are certain rules governing the Government officials he has to agitate the matter before the Central Administrative Tribunal and cannot have recourse to any provisions under the Industrial law. This position is made clear by the Apex Court in the following observations which are in para 11 of the reported judgment which reads as under:

> "11. It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the conduct Rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this court that these employees are civil servants regulated by these conduct rules. Therefore, by necessary implication, they do not belong to the category of workmen attracting the provisions of the Act." [Underlining is ours]

.. From the above we find that the Supreme Court has made it very clear that the Government servants are governed by service rules and not by the law applicable to the workmen under the Industrial Law.

14. At one stage it was argued that in the Factories Act no forum is created for claiming relief of OTA as provided in Section 59 of the Act. All workmen working in different industrial establishments approach the labour court / industrial court for getting reliefs under the industrial law including the Factories Act.

Therefore, if no forum is created in that Act then the workmen will have to approach the Labour Court or Industrial Court for adjudication. The argument that no forum is created under that Act is not correct because the forum is created under the Industrial Disputes Act.

15. Whether there is a forum or not the question is whether the applicants who are holding civil posts under the Government are entitled to get the benefit of Industrial Law including Factories Act in view of the observations of the Supreme Court mentioned above. By necessary implication these officials do not belong to the category of workmen attracting the provisions of the Industrial Law.

16. In 197(6) SUPREME [EXECUTIVE ENGINEER Vs. K.S. SHETTY & ORS.] similar question arose whether termination of services of a government servant can be agitated before the Labour Court under the I.D.Act. In that case the Lower court granted the relief and it was confirmed by the High Court. Then the matter was taken to the Supreme Court. The Supreme Court pointed out that Irrigation Department and Telecommunication Department are not "Industry" within the definition of I.D. Act and these services come under the sovereign function of the State. It was, therefore, held that the State is not an industry under the I.D.Act.

17. In 1977(6) SUPREME 285 [BOMBAY TELEPHONE CANTEEN EMPLOYEES ASSOCIATION Vs. UNION OF INDIA & ORS.] similar question arose about termination of services of Canteen employees of telephone exchange. The Supreme Court held that Telecommunication department is not an industry and therefore the labour court has no jurisdiction to adjudicate the dispute and the remedy of the aggrieved official is to approach Administrative Tribunal. In the last portion of para 10 of the judgment the Apex Court observed that the Telecommunication department is not an industry and the rules governing the conditions of service of the employees stand attracted and thereby the remedy under Article 226 would be available and that the Industrial Disputes Act cannot apply. It was held that the dismissed workman was holding civil post and by necessary implication they were excluded from the category of workman as defined under the Industrial Disputes Act. Again in para 11 it is observed that in view of the fact that the aggrieved officials in that case are not workmen and are holding civil posts the jurisdiction of the Industrial Tribunal stands excluded. In other words, the law laid down by the Apex Court is that such government officials are governed by service rules which are promulgated under Article 309 of the Constitution of India. If there is any violation of that rule then the official can certainly approach this Tribunal for remedy under section 19 of the Administrative Tribunals Act, 1985.

18. Then we may make a brief reference to the judgment of the Supreme Court in HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS, reported in 1997 SCC(L&S) 1079. In that case drivers and peons of Cooperative Training Institute who were daily wage employes had challenged their termination by filing a writ petition in the High Court. Their grievance was that their termination was contrary to S.25-F of the Industrial Disputes Act. It was pointed out by the Apex Court that every department of the Government cannot be treated as an industry and when the appointments are regulated by statutory rules, the concept of industry to that extent stands excluded. It was, therefore, held that that was not a case where S.25-F of the Industrial Disputes Act was attracted.

19. From the above discussion we find that all the departments of the Government cannot be treated as industry but they come within the sovereign power of the State and the officials are holding civil posts and they are governed by service rules.

20. In the present case we are concerned with the applicants who are working in India Security Press at Nashik. When service departments like Postal and Telecommunication can be brought within the domain of sovereign function, needless to say that the case of Security Press stands on a higher footing. It is the

monopoly of the State to print currency notes, stamp papers, stamps and it cannot be dealt with by any individual party. Therefore, India Security Press is very much within the domain of the sovereign function of the State. It is not and cannot be disputed that the applicants who are working in the India Security Press are governed by service rules promulgated under Article 309 of the Constitution of India. Their appointments, promotions, fixation of pay, superannuation, pension etc., are all governed by the Central Government Rules. Even there is provision for OTA. Therefore, the applicants by necessary implication cannot claim the relief of OTA provided under the Factories Act. The applicants cannot be said to be workmen within the meaning of either Factories Act or Industrial Disputes Act since they are holding civil posts and governed by the service rules applicable to the Central Government employees. By necessary implication they cannot claim relief which is applicable to industrial workers either under the Factories Act or under the Industrial Disputes Act.

21. It was argued that in some previous cases this Tribunal had interfered and granted OTA under section 59 of the Factories Act. Reference was made to orders passed in O.A.No. 63/95 and connected cases, O.A.No. 761/88 and other cases, where no doubt this Tribunal had

granted OTA at the rate mentioned in Section 59 of the Factories Act. In our view these earlier decisions cannot be pressed into service by the applicants in view of the pronouncements of the Apex Court which we have referred to above. In all those previous decisions the Government did not dispute the jurisdiction of this Tribunal or the right of the applicant to claim relief under the Factories Act. But in view of the law declared by the Apex Court in K.P.GUPTA's case this Tribunal cannot grant any relief which can be granted by the Industrial Court or Labour Court. However, in view of other pronouncements mentioned above, the Government servants are holding civil posts under the Government of India and are controlled and regulated by service rules and by necessary implication they cannot claim any relief under the Industrial Law. Therefore, the present applicants cannnot claim any advantage of some earlier decisions which are not now applicable in view of the law declared by the Apex Court in the recent judgments mentioned above.

22. Another submission on behalf of the applicants is that the Legislature has made an enactment of law, Factories Act, and that prevails over the service rules as provided in Article 309 of the Constitution of India. In our view this argument also has no merit. What article 309 of the Constitution provides is that till the Legislature passes any law regarding recruitment,

conditions of service etc., to persons appointed to public services the orders issued by the President under the proviso shall apply.

23. In the present case Factories Act is not a law made by the Parliament to provide for service conditions for officers holding civil posts within the meaning of Article 309 of the Constitution. In fact Factories Act is meant to govern some provisions for industrial workers and not the government servants or persons holding the civil posts. Since no law is made by the Parliament pertaining to Government servants regarding OTA the service rules which provide for OTA shall be applicable. We have already pointed out above that the Industrial Law necessary includes Factories Act and is not applicable to persons holding civil posts in the Government in view of the law declared by the Apex Court.

24. In view of the above discussions our conclusion is that in view of the law laid down by the Supreme Court in K.P.GUPTA's case the applicants cannot agitate any right under the Industrial Law before the Central Administrative Tribunal. If the applicants want any relief under the Industrial law like Factories Act, Payment of Wages Act and any other law they have to approach the appropriate forum under the Industrial Law.

25. In view of some of the latter decisions of the Supreme Court our further conclusion is that the applicants being government officials are holding civil posts under the Government of India and they are governed by the service rules issued under 309 of the Constitution of India regarding all the service matters which necessarily includes the allowances and OTA. If there is any grievance of the applicants regarding OTA as per the rules they are entitled to agitate the same before this Tribunal. However, the applicants being holders of civil posts by necessary implication cannot claim any relief like OTA or any other relief under the Industrial Law.

26. In the result all the three applications are rejected at the admission stage on the ground that the applications are not maintainable in this Tribunal for the reliefs claimed therein. No costs.

(P.P.Srivastava)
Member(A)

(R G Vaidyanatha)
Vice Chairman

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