

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 367 of 2004

Indore, this the 10th day of January, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. S.K. Banerjee, S/o. Shri P.G. Banerjee,
aged about 49 years, UDC, Gun Carriage
Factory, Jabalpur.
2. All India Association of Clerical Employees
of Ordnance Factories, through its Secretary,
(Gun Carriage Factory Branch), Gun Carriage
Factory, Jabalpur. Applicants

(By Advocate – Shri S. Paul)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman, Ordnance Factory Board,
10-A, S.K. Bose Marg, Kolkata.
3. The General Manager,
Gun Carriage Factory, Jabalpur. Respondents

(By Advocate – Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicants have claimed
the following main reliefs :

“(ii) set aside the seniority list dated 9.4.2004 Annexure A-1 so far it relate to the applicant and its members,

(iii) consequently command the respondents to regularize
the absence of applicants/members for 21.5.2003 by treating it
as leave duty and admissible. Accordingly the respondents are
directed to pay leave salary with interest for 21.5.2003.”



2. The brief facts of the case are that the applicant No. 1 is an affected employee and also Secretary of applicant No. 2 Association. The applicant No. 2 Association is a recognized Association by the respondent No. 1. An all India strike was called by certain trade unions registered under the Trade Unions Act, 1926 on 21.5.2003. The applicants were neither affiliated with AIDEF nor were supporting the aforesaid strike. The applicants were expecting that on 21.5.2003 for ensuring strike the striking union and their members will not leave any stone unturned to stop the employees to reach the respondent No. 3 factory. In earlier occasions also striking union used forces, picketing, road blocks etc. to stop the workers. Anticipating this problem the applicant's association preferred a representation to the management in advance. In this representation they have stated that they be given leave for the said date as they are not supporting nor taking part in the aforesaid strike. The said representation was duly received by the respondents on 20.5.2003. However, on the date of strike no security arrangements were made by the respondents or by the local administration and accordingly all the roads reaching the gates of the respondent No. 3 factory were blocked by the striking workers by way of picketing, barriers etc. Hence, the applicant No. 1 and most of the members of the applicant No. 2 could not present themselves in the factory on 21.5.2003. The respondent No. 3 deducted the salary for 21.5.2003 from the employees and the members of the applicant No. 2 association. In other factories also non-striking association/union preferred similar representation for providing security, intimating non-participation and non-support to strike and making request to provide leave in the event of any obstruction to their members. Several OAs Nos. 387/2003, 414/03, 451/03 and 454/03 were filed by certain similar employees of Vehicle Factory, Jabalpur, Ordnance Factory, Khamaria, Jabalpur, wherein also the management intended to deduct the salary from the employees for the striking date i.e. on 21.5.2003. The Tribunal decided these matters by a common order on 3.12.2003. 506, Army Base Workshop is also working under the respondent No. 1. In the said establishment, the employer has already paid the salary of the strike day



to the employees who were not supporting the strike. The applicants further submitted that in Vehicle Factory, Jabalpur and Ordnance Factory, Khamaria, Jabalpur also no recovery/deduction of salary of striking day has been made till date. A show cause notice at Annexure A-8 was issued to the applicants. The applicants filed their reply to the said show cause notice. But vide the impugned order dated 9.4.2004 the respondents decided to treat the said period of absence i.e. on 21.5.2003 as dies-non. Aggrieved by this the applicants have filed this Original Application.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicants that the applicants had intimated the respondents vide their letter dated 20.5.2003 (Annexure A-2) that the applicants are not participating in the strike to be held on 21.5.2003 and they also do not support it. They requested for proper security arrangements to reach the factory but the respondents did not make any arrangements. Hence, they could not attend their duties on 21.5.2003. He also argued that they have mentioned in their rejoinder that on 21.5.2003 certain senior officers of the respondent No. 3 i.e. of Group-A grade and Group-B grade also did not attend their duties and not reported at their working place on 21.5.2003. This contention of the applicants is not controverted by the respondents. He further argued that to the show cause notice issued on 8.3.2004 (Annexure A-8), the applicants have submitted their representation on 13.3.2004 (Annexure A-9) mentioning the fact about the aforesaid OAs and particularly mentioning about OA No. 451/2003 relating to the applicants of 506, Army Base Workshop, Jabalpur. But the respondents passed the impugned order dated 9.4.2004 (Annexure A-1) without discussing about the contentions mentioned by the applicants in their representations. Hence, the reliefs claimed by the applicants are likely to be granted.

5. In reply it is argued on behalf of the respondents that show cause notices were issued to the applicants and after receiving their



representations/reply it was disposed of vide order dated 9.4.2004 by the competent authority declaring the applicants willfully absent from their duties on 21.5.2003. The respondents made necessary arrangements for the employees to stay inside the factory in the industrial canteen for their accommodation and refreshments and adequate security was also provided to the employees who were willing to attend the factory. Not even a single complaint or incident was reported by both the civil authorities and as well as by any employee. Even the applicants who are alleging non-attending of duties due to alleged picketing have not lodged any complaint with the local police or the management that they were prevented from attending the factory by striking elements. The applicants absented themselves willfully. Hence, the action taken by the respondents is legal and justified.

6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings, we find that the applicants had sent letters to the respondents on 20.5.2003 i.e. one day earlier to the strike dated 21.5.2003 with the contention that they are not participating in the strike and they do not support it. They have said in the rejoinder that on the date of strike on 21.5.2003 the senior officers of the respondents also did not attend their duties and they also did not report to their working place. This fact is not controverted by the respondents. It supports the contention of the applicants that they could not attend their office on 21.5.2003 under compelling circumstances of not providing adequate security by the respondents as there was picketing, road blocks etc. Against the show cause notice at Annexure A-8 the applicants had filed their representations in which they have mentioned the fact of the OAs referred to above particularly OA No. 451/2003. Regarding this contention of the applicants the respondents have not mentioned any finding in the impugned order dated 9.4.2004. We have perused Annexure A-1 in which the respondents have not considered the contentions mentioned in the representations of the applicants. Hence, considering all the facts and circumstances of the case, we are of the opinion that the



impugned order dated 9.4.2004 (Annexure A-1) is liable to be quashed and set aside. We do so accordingly. The respondents are directed to reconsider the representation of the applicants in the light of the judgment of the Tribunal passed in OA No. 451/2003 and also considering the facts mentioned by the applicants in the rejoinder that on the strike date on 21.5.2003 the senior officers of the respondents also did not attend their duties and also do not report at their working place, within a period of two months from the date of receipt of a copy of this order, by passing a speaking, detailed and reasoned order.

7. Accordingly, the Original Application stands disposed of. No costs.


(Madan Mohan)
 Judicial Member


(M.P. Singh)
 Vice Chairman

“SA”

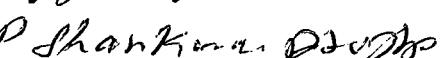
पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....
 पत्रिलिखि नं. ०१०२:-

- (1) सचिव, उच्च वायाप्रान अ.ए एक्सेसिएशन, जबलपुर
- (2) आवेदक श्री/महिला/दृष्टि.....के काउंसल
- (3) पत्त्यर्थी श्री/महिला/दृष्टि.....के काउंसल
- (4) गंधपाल, कोर्ट अ.ए, जबलपुर न्यायपीठ

सूचना एवं आवश्यक छार्टवाही द्वेष्टि ००

उप रजिस्ट्रार


 S. Patel D.D.O.P


 P. Shankar D.D.O.P

*To be issued
01/05
On 25/05*