

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 387 of 2003

Original Application No. 414 of 2003

Original Application No. 451 of 2003

Original Application No. 454 of 2003

Jabalpur, this the 3rd day of December, 2003

Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 387 of 2003 -

1. V.N. Kamlaker, S/o. Shri V. Raghuram, aged about 52 years, Chargeman Grade-II, Vehicle Factory, Jabalpur, R/o. 105, Alok Nagar, Adhartal, Jabalpur.
2. All India Association of Non-Gazetted Officers (Recognised by Govt. of India), Through its Secretary (VFF Branch), Vehicle 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. Director General of Ordnance Factories, 10-A, Shahid S.K. Bose Marge, Kolkata.
3. General Manager, Vehicle Factory, Jabalpur. ... Respondents

(By Advocate - Shri K.N. Pethia)

2. Original Application No. 414 of 2003 -

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 (GCF 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. Director General of Ordnance Factories, 10-A, Shahid S.K. Bose Marge, Kolkata.
3. General Manager, Gun Carriage Factory, Jabalpur.

... Respondents

(By Advocate - Shri P. Shankaran)

3. Original Application No. 451 of 2003 -

1. Shiv Kumar Gupta, S/o. Late Narayan Prasad Gupta, aged about 40 years, Ticket No. 795, Section ARG, 506, Army Based Workshop, Jabalpur.
2. 506 Army Based Workshop Pratiraksha Mazdoor Sangh, Jabalpur, Registration No. 5276, Through its General Secretary, Shri Biharilal Vishwakarma, S/o. Ramdas Vishwakarma, aged 36 years, Ticket No. 642, Section GEG, 506 Army Based Workshop, 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. Director General of EME, NGO's Branch, AHQ, DHQ, P.O. New Delhi.
3. Commander, Headquarter Base Workshop Group, Merrut, Cantt.
4. Commandant, 506, Army Base Workshop, Jabalpur.

... Respondents

(By Advocate - Shri P. Shankaran)

4. Original Application No. 454 of 2003 -

1. K.O. Allauddin, S/o. Shri Umar Kutty, aged about 50 years, Vehicle Factory, Jabalpur.
2. Virendra Kumar Dubey, S/o. Shri KP Dubey, Aged about 42 years, Vehicle Factory, Jabalpur.
3. Indian Ordnance Factories Supervisor's Association, through its Executive Member, Shekhar Kumar Dey, S/o Late SR Dey, Aged about 29 years, IOFSA Branch, Vehicle Factory, Jabalpur.

4. All India Association of Clerical Employees of Ordnance Factories, Through its Chairman, C.L. Rajak, S/o Shri Ganesh Prasad Rajak, Aged about 50 years, Branch Vehicle 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. Director General of Ordnance Factories, 10-A, Shahid S.K. Bose Marge, Kolkata.

3. General Manager, Vehicle Factory, Jabalpur. ... Respondents

(By Advocate - Shri S.P. Singh)

O R D E R (COMMON)

Original Application No. 387/2003 and Original Application No. 454/2003, the reliefs claimed are identical. Original Application No. 414/2003 and Original Application 451/2003, the reliefs claimed are identical. Almost the reliefs claimed in all the cases are similar in nature and are identical. Hence all the cases are clubbed together and common final order is passed.

2. An All India strike was called by certain Trade Unions, registered under the provisions of Trade Unions Act, 1926. The strike call was given by All India Defence Employees Federation (AIDEF). The Trade Unions who were affiliated with the said Association, have observed strike on 21.05.2003. In the said strike the applicants were not involved/supporting. However, the applicants were expecting problem of picketing and use of force on the part of the Unions and members who have observed strike for the other employees also even though they are not supporting/participating in the strike. The applicants had submitted a

in O.A. No. 387/2003 representation vide Annexure A-2 requesting the management to provide safe passage from the entry to the factory to discharge their duties. The applicants apprehended that there was likelihood that on the date of strike, by way of picketing and use of force, the striking Unions and their workers may prevent other employees to enter/reach the Factory premises. Accordingly vide letter dated 17.05.2003 there was a request that the members of the Association are willing to report on their duties if they are given protection and are not prevented to reach the Factory by force or otherwise. A request was made to take necessary steps by the respondents so that willing workers should not be deprived to perform their duties and they should also not be made subject to any disciplinary action or ~~no work no pay.~~

Accordingly on the date of strike there was picketing and use of force by the members of the striking Unions and, therefore, the applicants and their employees could not report to their duties.

3. The NGOs and NIEs were not supporting the aforesaid strike. The respondent No. 3 called a meeting of NGOs and NIEs on 20.05.2003 and it was agreed/advised by the Sr. General Manager to submit the leave applications on 22.05.2003 positively showing the reason for not attending the duty because there was certain Associations who were not party to the strike dated 21.05.2003. The applicants and the members of the Association have already submitted their leave form on 22.05.2003.

4. The Ordnance Factory Board, Kolkata had issued a circular dated 29.09.1989 regarding treatment of absence of unwilling non-striking workers/employees, in which the respondents have taken the decision in pursuance to the

orders of the Central Administrative Tribunal, Madras Bench.

The relevant portion of the said order is extracted below :

"2.
The factories are, therefore, requested that in future whenever they want to apply the principle of 'no work no pay' or effect dies non or take actions like break in service/forfeiture of past service, etc. a show cause against the employees in question should be first served. The employees conduct after receipt of replies against the show cause should be examined and order passed on the reply against the show cause notice. The show cause notices should be served only against those employees in whose cases the absence remains non-regularised due to nonsubmission of leave.

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... The factories may also find it difficult to claim the wages of employees who remained absent on a strike or Bandh day and in whose cases the replies against the show cause notices are yet to be received and considered. In such cases the factories can make provisional payments subject to their being recovered at a later date. Appropriate factory orders stating the provisional payment and the discretion of the authorities for making deduction after receipt of replies against the show cause notices should be published.

4. The absence of the employees on 19.9.89 should also be dealt with under these instructions."

The respondents had also issued a similar kind of circular which is referred at Annexure A-4 dated 26th September, O.A. No. 387/2003 and in 1983, in *which* it was made clear that in the eventuality of *of* submission of leave application by the employees who are willing to perform their duties and are deprived to do so because picketing and forceful measure adopted by striking Union, there has to be an application of mind on the reasons assigned by the affected employee and only on striking and consideration of the case, a decision regarding regularisation of strike period should be taken.

5. The applicants have further urged that circular dated 17.06.2003 at Annexure A-1 in OA No. 387/2003 was issued without issuing the notice and without following the principles of natural justice and an opportunity to the effected employees. The contents of the said circular is extracted below :

"With reference to orders mentioned above it may be noted that those employees who have remained absent unauthorisedly on 21.5.2003 will not be entitled to any pay and allowances for such absence. Other action as mentioned in the Factory Order and Circular will be decided as per direction by OFB as received in due course.

The salary for 21.5.2003 is, however, being paid alongwith salary for the month of May 03, purely on provisional basis. The same will be recovered from salary for the month of June 03 unless instructions to the contrary are received from OFB/MOD."

6. Per contra the respondents have filed their separate replies in all the OAs. The respondents urged that the Original Applications are not maintainable since Annexure A-1 in all the OAs except OA No. 451/2003, is not an order but is only an internal correspondence of the respondents. There is no cause of action for the applicants to approach the Tribunal for quashing the same. It is further urged that the strike period which was an unauthorised absence would constitute break in service entailing forfeiting the past services for all purposes besides deduction of pay and allowances for the period of such absence i.e. principle of no work no pay will be followed. The respondents have produced a circular dated 10.05.2003, to all the concerned highlighting, the consequences of participation in the strike. It was clearly stated that in case any employee remains absent from duty on 21.05.2003 i.e. the strike day without any authority will not be entitled to any pay and allowances during the period of such absence from duty and such absence would constitute break in service entailing forfeiture of the past services for all purposes. Even though the clear instruction issued by them, the applicants have remained absent on 21.05.2003 unauthorisedly. As per Annexure R-3 official memorandum in OA No. 387/03, dated 20.06.1972 issued by the Ministry of Defence, it is clearly stated that the unauthorised absence of such kind who participates on strike day apart from resulting in loss of pay and allowances for the period of

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such absence would also constitute break in service entailing forfeiting of past service for all purposes unless the break in service is condoned and treated as dies non. The respondents further contended that so far the respondents have not taken any decision and the deduction proposed was to be done provisionally pending Government of India's final decision, on how to treat the period of absence, of the workers during the strike period. A circular dated 17.06.03 was issued as to follow up action of Factory Orders published on the subject. The applicants have failed to comply with the instructions circulated vide order dated 10.05.2003 and circular dated 10.05.2003 and remained absent from duty unauthorisedly on 21.05.2003.

7. The applicants remained absent from duty unauthorisedly on 21.05.2003 and the competent authority was not satisfied with the grounds mentioned for such unauthorised absence on 21.05.2003. The plea of the applicants that the absence should be regularised through leave application is not tenable. The respondents have filed the document at in O.A. No. 387/2003 Annexure R-1, where the General Secretary of Vehicle Factory Mazdoor Union, Jabalpur have issued a notice of strike. In pursuance to the said strike notice the respondents i.e. the Indian Ordnance Factory has issued the order dated 10th May, 2003 (Annexure R-2 in OA No. 387/2003), wherein in para 1 it was stated that any employee absenting from duty without any authority ~~shall~~ ^{are} not be entitled to any pay and allowances during the period of such absence. It was further mentioned that the unauthorised absence would constitute a break in service entailing forfeiture of past services for all purposes besides resulting in deduction of pay and allowances for the period of such absence i.e. No work No pay principle will be followed. The respondents have also filed Annexure R-3 in OA No. 387/2003 dated

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the 20th June, 1972, in respect of treatment of absence of Central Government Employees on account of Bandh etc.

8. In OA No. 414/2003 similar reply has been filed, stating that in view of the judgment of the Hon'ble Supreme Court in the case of Bank of India Vs. T.S. Kelawala reported in 1990(4) SCC 744, the working class has undisputedly earned the right to strike as ~~and~~ industrial action after a long struggle. So much so that, the relevant industrial legislation recognises its implied right, however, legislation also circumscribes the right by prescribing condition under which alone it may become legal. Whereas, therefore, a legal strike may not invite disciplinary proceeding, an illegal strike may do so, it being a misconduct. However, whether the strike is legal or illegal the worker are liable to loose wages for the period of strike. The liability to loose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it they do so do knowing full well of its consequences during the period of strike, the contract of employment continues but the workers without their labour consequently they cannot expect to be paid. The respondents have also relied on the judgment of the Hon'ble Supreme Court in the case of Smt. Saran Kumar Gaur & Ors. Vs. State of UP & Ors. reported in 1993 Supp (2) SCC 749.

9. In reply of OA No. 451/2003, the respondents have taken a ground that on 21.05.2003, all the workers in industrial cadre remained absent and they were marked absent in the check roll for that date and accordingly wages were not paid to them because of their absence from duty for that period had not been regularised. The specific contention made by the respondents in para 9 is extracted below :

Eg.

" Regularisation of absence of workers who remained absent from duty on 21 May 2003 on the ground of strike was under active consideration with the higher authority and according to the policy decision taken on the subject matter, unauthorised absence of the following workers/employees is being treated as dies non :

(i) Active members of the striking union i.e. Shramik Sangh, 506 Army Base Workshop (affiliated to AIDEF).

(ii) Workers residing in civilian colony which is within the Workshop area.

Period of absence i.e. 21 May 2003 in respect of all other workers irrespective of their membership in any of the unions, has been regularised by grant of leave, based on their leave applications, since they were unable to attend duty due to picketing and the wages/ salary deducted for the month of May 2003 was refunded to them."

It was further submitted that those who were absent from duty and such employees/workers who deliberately remained absent from duty on 21 May, 2003 without any justification and their absence was not regularised ~~as~~ ^{the} leave as applied for. Instead, they have been issued a show cause notice on 9th October, 2003 as to why their unauthorised absence on 21st May, 2003, should not be treated as dies non. The cases of the workers mentioned at para 1(g)(i) and (ii) above quoted will be considered and the date of absence will be regularised as per rule, on receipt of their reply to the show cause notice. The wages of only those workers, who remained absent from duty on the strike date and whose wages are drawn through Check Roll, were deducted when paid for the month of May 2003, as their absence from duty was not regularised by that time. In other cases no deduction has been made from the salary drawn through pay bill for the month of May 2003. But payment was made subject to regularisation of the absent ~~as~~ period subsequently or otherwise. It is further contended that the instructions contained in the letter dated 29.09.1989 at Annexure A-4 in OA No. 451/2003, are not applicable to the present applicants as they belong to a different organisation and the instructions contained in above letter were issued by



the Ordnance Factory Board for employees working under them. Similarly, the instruction contained in letter dated 26.09.1983 at Annexure A-5 in OA No. 451/2003, is also not relevant to the instant case as it is pertaining to treat the absence of employees on the day of Bandh. It is settled law that an employee who remains absent from duty without any justification is not entitled to salary on the principle of no work no pay. However the case of the employees as mentioned in para 1(g)(i) and (ii) have been considered as per Rule and Instructions on the subject and the respondent No. 4 granted them leave as applied for and paid their salary accordingly. Since show cause notice was issued to the employees in OA No. 451/2003 and the applicants and the Union members have not submitted ^{their} objections to the said show cause notice, the issue regarding declaration of Bandh period has not been decided so far. Before taking a decision by the respondents the applicants have approached this Tribunal. Hence the Original Application is premature and the same is liable to be dismissed as premature.

10. The ~~XXXX~~ impugned order at Annexure A-1 in all the OAs except OA No. 451/2003, is an administrative matter, which is a correspondence within the Department and the applicants have obtained an unauthorised copy from the office and have challenged the same before this Tribunal. The respondents have not taken a decision on the issue, that, whether the individual employee was on ^{an} unauthorised strike or whether that period has to be treated as on duty? They have to comply the directions issued vide order dated 29.09.1989. If the direction is ^{given to} accepted by the respondents then they will issue a show cause notice to the employees and after submitting their respective objections, they will

decide the issue and then the applicants/employees can proceed according to the orders passed individually. The applicants have no legal right/and no fundamental rights under Article 14 of the Constitution of India are violated. Hence the applicants have not made out any case for grant of any reliefs as claimed in the OAs and the same is liable to be dismissed as pre-mature.

11. Subsequent to filing of the replies by the respondents in all the OAs, the applicants in OA No. 387/2003 have submitted their rejoinder alongwith the documents from Annexure RJ-1 to Annexure RJ-9. In the rejoinder the applicants have stated that/the geographical conditions of the factories they are located in the main road, travels from Satpula to Khamaria. The factories are, Gun Carriage Factory, Vehicle Factory, Jabalpur, Grey Iron Foundry, Central Ordnance Depot, 506 Army Base Workshop and Ordnance Factory, Khamaria. The applicants have submitted documents Annexure RJ-1 to RJ-3, which are paper publication and Annexure RJ-4 is a letter submitted by an individual asking protection/further stating that security during the strike period and/the responsibility should go to the Management and not to the individuals and there should not be any kind of action/punishment like wage deduction or breakage in service at later stage by the Management. Annexure RJ-5 is a letter submitted by the Junior Works Manager to the DGM by forwarding the request letters/leave letters submitted by the employees. Annexure RJ-6 is a leave form of an applicant seeking casual leave with the reason, due to heavy picketing. The applicants have also submitted extracts of Swamay's Handbook, 2000 at Annexure RJ-9. The relevant para is quoted below :

"8. Natural Calamities, Bandhs, etc.- Heads of Departments may grant Special Casual Leave to employees residing at places 8 km away from their office, when they are unable to attend office due to dislocation of traffic arising out of natural calamities,

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bandhs, etc. If the absence was due to picketing or disturbances or curfew, Special Casual Leave may be granted irrespective of the distance from residence to office.

If, however, the official had applied or applies, for leave for genuine reasons, e.g., medical grounds, etc., for the day/days of the bandh, he may be granted the leave admissible including Casual Leave, and not Special Casual Leave.-OM,dated 1-11-1971 and 28-5-1979!!

12. The applicants have further contended that the respondents were aware that there was a strike on 21.05.2003 and leave letters were given earlier by all the applicants requesting that they were not participating in the strike and due to picketing, they will not be able to attend their duties. Hence their leaves should be sanctioned and there should not be any deduction of salary for that period. A circular Annexure A-1 in all the OAs except in OA No. 451/2003 was issued to recover the salary for one day from the month of June, 2003. As the respondents have made up their mind to recover one day salary from the month of June, 2003, hence the applicants have approached this Tribunal for the action of the respondents being taken. Accordingly the reliefs as prayed in the Original Applications are liable to be allowed.

13. After hearing the learned advocate for the applicants and the learned advocate for the respondents the said Original Applications are disposed of finally.

14. I find that the circular dated 17.06.2003 is not an order but it is only a circular which has no force in the eye of law. The said circular is not issued to the applicants and the matter is under consideration of the respondents. According to the submission of the respondents they have to take a decision in pursuance to the circular dated 17.06.2003. The respondents should issue individual notices to each and every applicants and the employees who were absent on



21.05.2003, in view of the order dated 29.09.1989. This fact has been admitted by the respondents. After issuing the show cause notice and after giving them ^{an} opportunity, it is for the respondents to take decision whether the strike period can be regularised or not? If any adverse order is passed against the applicants then only their cause of action will arise. Hence the respondents have rightly argued that the circular dated 17.06.2003 should not be quashed.

15. The respondents further submitted that the Tribunal should not restrain the Management to recover one day salary i.e. for the date on which the strike was observed.

16. After perusal of the records carefully, it is found that whether the applicants have proved their cases for grant of reliefs as claimed in the Original Application. The learned counsel for the respondents submitted that they will take a decision in respect of recovery of the salary notices for one day strike i.e. on 21.05.2003, after issuing to all the employees and after hearing the concerned employee who did not participate in the strike, they will pass the final individual orders. Hence the circular dated 17.06.2003 should not be quashed and liberty be given to the respondents to finalise the issue without observing on merits. The applicants have also submitted that if the respondents want to take action after issuing the show cause notice and after hearing the individual employee, then they have no objection for adjudication of the issue. But till then the respondents should not recover the one day salary from the monthly wages of the applicants. Since the respondents have already reimbursed the one day wages/salary deducted from the month of May 2003, as stated in reply para 1(g) filed

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in OA No. 451/2003, the same yardstick should also be applicable to the applicants of other three cases.

17. Accordingly, the Original Applications are disposed of with a direction to the respondents to issue show cause notices to the individual employees those who did not participated in the strike on 21.05.2003 and after hearing the individual employee/worker, the respondents are directed to pass the individual final order. If the show cause notices are already issued to the concerned individuals, then after hearing the individual employee/worker the authorities are directed to pass appropriate and speaking order. The respondents are directed to comply with the orders of the Tribunal within a period of three months from the date of receipt of copy of this order.

18. In view of the observations made above the Original applications are disposed of. No costs.


(G. Shanthappa)
Judicial Member

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Twin Cities
8/12/03