

UNION OF INDIA AND ANR.

A

v

CHOTELAL AND ORS.

DECEMBER 9, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

B

Administrative Tribunals Act, 1985—Section 14 (1)(a)—Post of Dhobi at National Defence Academy—Whether Civil Post—Paid out of Regimental Fund—Held—Regimental Fund not public fund—Dhobis not holding Civil Post—Jurisdiction of Central Administrative Tribunal barred.

C

Defence Services Regulation—Para 801 (a)&(b) and Rule 820—Public Fund— Regimental Fund—Not public fund—Exercise of some control by commanding officer on Dhobis—Will not mean payment to them is made from Consolidated Fund or of any Public Fund.

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The respondents are Dhobis appointed to wash the clothes of the cadets at NDA, Khadakwasla and are paid from the fund called 'Regimental Fund'. The question which arose for consideration was whether Dhobis so appointed can be said to be holders of civil post so as to confer jurisdiction on the Central Administrative Tribunal for issuing direction in relation to their Service conditions.

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The Tribunal by the impugned judgment concluded that the 'Regimental Fund' from out of which Dhobis are paid their salaries gets covered by both the Consolidated Fund of India through the grants-in-aid and it is paid to the institutions under the military which have to be funded and set up to ensure the various activities. It further held that Regimental Funds are controlled and audited by the Controller and Auditor General of Defence Account alongwith other Public Accounts of the Government and as such the posts of Dhobis are civilian posts connected with Defence conferring jurisdiction on the Tribunal to redress the grievances.

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Before this Court, it was contended on behalf of the UOI that Dhobis engaged for washing clothes of the cadets do not satisfy any of the conditions enumerated under Section 14(1)(a) of the Administrative Tribunal Act, 1985 so as to confer jurisdiction on the Central Administrative Tribunal.

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On behalf of the respondents it was contended that the washing

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A allowance payable to the cadet being paid from the Consolidated Fund of India and the same being credited into a fund called 'Regimental Fund' and Dhobis being paid out of the said funds, the Tribunal was justified in coming to the conclusion that the Regimental Fund itself gets impressed with the character of the consolidated Fund and holders of post paid out of that fund in the true spirit and sense must be held to be holders of civil post under the Ministry of Defence of the Union Government and, therefore Tribunal gets the jurisdiction to decide the service conditions of the holders of such posts.

B Allowing the appeal, this Court

C HELD : 1.1. The Regimental Fund cannot be held to be Public Fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of Civil Post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue directions relating to their service conditions. [453-B-C]

D 1.2. Only because of exercise of some control by the Commanding Officer over such Dhobis it can not be concluded that these posts are civil posts and that payment to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence. [453-C-D]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 921 of 1995.

From the Judgment and Order dated 9.2.94 of the Central Administrative Tribunal at Bombay in O.A. No. 454 of 1992.

F V.C. Mahajan, N.B. Shetye, Ms. Rekha Pandey, R.B. Misra, Ms. Halida Khatoon, (S.W.A. Qadri) for Ms. A. Subhashini, A.M. Khanwilkar, A.P. Mayee, C.A. Khaladkar, (Dr. Sumant Bhardwaj) for Ms. Mirdula Ray Bhardwaj, Ms. Subhadra Chaturvedi, Amitabh Chaturvedi and Rajesh Nair, (Naresh Kumar) for K.N. Rai for the apperaing parties.

The Judgment of the Court was delivered by

G **PATTANAİK, J.** This appeal by Union of India is directed against the order of the Central Administrative Tribunal, Bombay Bench, Bombay, dated 9.1.1994. The short question that arises for consideration is whether Dhobis appointed to wash the clothes of the cadets at NDA, Khadakwasla and are paid from the fund called 'Regimental Fund' can be said to be holders of civil post so as to confer jurisdiction on the Central Administrative Tribunal for

issuing any direction in relation to their service conditions? The Tribunal by the impugned judgment came to the conclusion that the 'Regimental Fund' from out to which Dhobis are paid their salaries gets covered by both the Consolidated Fund of India through the grants-in-aid as it is paid to the institutions under the military which have to be funded and set up to ensure the various activities including social and welfare activities. It further held that Regimental Funds are controlled and audited by the Controller and Auditor General of Defence Account alongwith other Public Accounts of the Government and as such the posts of Dhobis are civilian posts connected with Defence conferring jurisdiction on the Tribunal to redress the grievances. On merits the Tribunal taking into account the fact that Dhobis are working for nearly 30 years in the Defence establishment and yet are not covered by the Provident Fund Act and other Government schemes issued the direction that the authorities of NDA may prepare a scheme for appointment of Dhobis on permanent basis and put them on regular footing as permanent government employee.

Mr. Mahajan, learned senior counsel appearing for the appellant contends that in view of the nature of duties discharged by these Dhobis, the nature of fund from which their salaries are paid, the nature of control that is exercised by the authorities of the National Defence Academy over such Dhobis the conclusion of the Tribunal that the posts are Civil posts is wholly erroneous and the same cannot be sustained. According to Mr. Mahajan, under Section 14(1)(a) of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal on land from the appointed day exercise jurisdiction in relation to the 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. Dhobis engaged for washing clothes of the cadets do not satisfy any of these pre-conditions so as to confer jurisdiction on the Central Administrative Tribunal and, therefore, the impugned order of the Tribunal is un-sustainable in law. Learned counsel appearing for the respondent on the other hand contended, that the washing allowance payable to the cadets being paid from the Consolidated Fund of India and the same being credited into a fund called 'Regimental Fund' and Dhobis being paid from out of the said funds, the Tribunal was justified in coming to the conclusion that the Regimental Fund itself gets impressed with the character of the Consolidated Fund and holders of post paid out of that fund in true spirit and sense must be held to be holders of civil post under the Ministry of Defence of the Union Government and, therefore, Tribunal gets

- A the jurisdiction to decide the service conditions of the holders of such posts. The learned counsel further contended that taking into account the gross injustice meted out to such Dhobis who have been serving the cadets for more than 30 years, the Tribunal rightly issued certain directions to evolve a scheme for regularisation of such Dhobis and there is no illegality with the order of the Tribunal so as to be interfered by this Court under Article 136 of the Constitution.
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In view of the rival contentions raised, the most crucial question that arises for consideration is what is the nature of the post against which the Dhobis get their appointment for discharging the duties of washing clothes of the cadets? From the terms and conditions of the letter of appointment issued to such Dhobis it is crystal clear that the appointments cannot be held to be one against any civil post. On the other hand it clearly indicates that the appointment is purely private payable out of Regimental Fund. Initially these Dhobis were being paid at a particular rate per cadet on the basis of actual number of cadets a Dhobi is required to serve, but later on a monthly salary, no doubt, has been fixed for being paid to such Dhobis. The terms of appointment, no doubt vest certain control over such Dhobis on the Commandant of the Academy but nonetheless such control cannot impress the post of Dhobis with the character of a Civil post. It is also borne out from the record that each cadet is granted a monthly Dhobi allowance and the said allowance is put into a fund called 'Regimental Fund' under the management of Commanding Officer of the institution. At this stage it would be appropriate to notice some provisions of the Defence Services Regulation which would give an idea as to the characteristic of the Regimental Fund. Under Para 801 of the Regulation Public Funds have been defined as such :-

F "801 (a) Public Funds - Include all funds which are financed entirely from public money, the unexpanded balances of which are refundable to Government in the event of not being devoted to the objects for which granted, and also

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- (i) unissued pay and allowances;
 - (ii) Office allowance fund; and
 - (iii) the estates of deceased men and deserters."

H Para 801 (b) defines 'Regimental Fund' to mean comprising all funds, other than public funds maintained by a Unit.

Rule 820 provides for administration of such Regimental Fund and 820(a) clearly indicates that all funds other than public funds as defined in Para 801 maintained by a unit, which are financed either wholly or partly from public money. Regulation further provides that the Commanding Officer acts as a trustee in relation to the 'Regimental Fund' and is responsible that the funds are properly applied with special reference to the object of the fund and for the benefit of the personnel or unit as a whole.

In view of the characters of the Regimental Fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of Civil post within the Ministry of Defence so as to confer jurisdiction of the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence.

In the aforesaid premises the contention of Mr. Mahajan, learned senior counsel that the Central Administrative Tribunal has no jurisdiction to go into the question of service conditions of such Dhobis has to be sustained and consequently, the impugned order of the Tribunal has to be set aside. We accordingly, set aside the impugned judgment of the Tribunal and dismiss the OA. This appeal is allowed, but, in the circumstances without any order as to costs.

A.M.

Appeal allowed.