

person enrolled *under this Act*." Section 153 dealing with rank structure had dealt with classification of the officers and other members of the force in accordance with their rank and clause (d) of sub-section (1) has categorised constable only as "enrolled persons other than under-officers". These provisions leave no doubt that the only "other enrolled person" of which clause (p) speaks of is constable. The Lower Division Clerk is not such a person. [672-E, F]

1.2. The provisions governing Central Reserve Police Force do not at all with the mode of enrolment of Lower Division Clerks. The same is governed by what has been provided in Indo- Tibetan Border Police Force (Lower Division Clerk) Recruitment Rules, 1973. [673-F]

1.3. The two petitioners could not be regarded as members of the armed forces of the Union and as such their service matters would not be beyond the jurisdiction of the Tribunal inasmuch as they have to be treated as "civilians" which would bring into operation section 14 of the Administrative Tribunal Act because of which the Tribunal would have jurisdiction concerning their service matters. [673-H, 674-A]

CIVIL ORIGINAL JURISDICTION : Writ Petitions (C) Nos. 687 and 751 of 1988.

(Under Article 32 of the Constitution of India.)

A.P. Mohanty for the Petitioners.

V.V. Vaje, P.Parmeswaran, R.P. Srivastava, W.S. Quadri, Ms. Sushma Suri, Ms. A. Subhashini and Ms. Asha Jain Madan for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. The only point for decision in these petitions under Article 32 of the Constitution is whether the Central Administrative Tribunal (hereinafter the Tribunal) has jurisdiction to adjudicate the matter relating to the promotion of the two petitioners. The Tribunal having been established under the Administrative Tribunals Act, 1985 would have no Jurisdiction if the petitioners be members of "armed forces of the Union", because of what has been stated in section 2(a) of this Act. The point for determination, therefore, is whether the two petitioners, who at the relevant time were Lower Division Clerks, can be said to be member of the "armed forces" or they have to be taken as "civilians".

A 2. The two petitioners having been appointed as clerks of the Indo-Tibetan Border Police Force, the submission of Shri Mohanty, appearing for the petitioners, is that as this police force is an "armed force of the Union", the incumbents have to be taken as members of this force, because of the definition of this expression as given in section 2(1) (p) of the Indo-Tibetan Border Police Force Act, 1992, for short, the Act. This submission is countered by Shri Vaje appearing for the Union of India, because according to him, apart from an officer, subordinate officer or an under-officer, which the two petitioners admittedly are not, the only other person who can be regarded as member of the Force, because of what has been stated in aforesaid section read with the definition of "enrolled person" in section 2(1)(j), is Constable, as would appear from what has been mentioned in sections 153(1)(d) of the Act.

D 3. Let us first see what do the provisions of the Act reveal? As Shri Mohanty has placed strong reliance on the aforesaid defining clauses, along with section 6 of the Act, let these provisions be noted. Section 2(1)(p) has defined "member of the Force" to mean "an officer, a subordinate officer, an under-officer or other enrolled person". Clause (j) of the sub-section (1) has defined "enrolled person" to mean "under-officer or other person enrolled *under this Act*." (Emphasis supplied). Section 153 dealing with rank structure has dealt with classification of the officers and other members of the Force in accordance with their ranks and clause (d) of sub-section (1) has categorised constable only as "enrolled persons other than under-officers". These provisions leave no doubt that the only "other enrolled person" of which clause (p) speaks of is constable.

F 4. Shri Mohanty, however, submits that section 6 of the Act enlarges the meaning as this section states that mode of enrolment and procedure of enrolment shall be such as may be prescribed. Learned counsel then speaks to draw assistance from rule 187 of the Indo-Tibetan Border Police Force Rules, 1994 which is on the subject of "Transitory provision" and states that any rule or order applicable to the Force on commencement of these rules shall, unless repugnant to these rules, continue to apply unless and until abrogated or modified by the Central Government or any other competitive authority. The purpose of referring us to this rule is that a Lower Division Clerk of Central Reserve Police Force has been given the status of a Head Constable as would appear from what has been stated under the title "Status of Ministerial Staff" in Chapter VI of the Estab-

lishment Manual of the Central Reserve Police Force, 1976. Shri Mohanty states that before the Indo-Tibetan Border Police Force Act had come to be enacted, the provisions governing Central Reserve Police Force were applicable to the members of the Force at hand, and so, the aforesaid provision finding place in the Establishment Manual would apply to the petitioners also by force of section 6 of the Act.

5. We find no merit in the aforesaid submission because section 6 itself deals with the person to be enrolled to the Force. As such the person concerned has to be "enrolled person" within the meaning of clause (j) of sub-section (1) of section 2 of the Act. Such a person is only a constable as already held; Lower Division Clerk is not such a person. We agree with Shri Vaje that what has been stated in the aforesaid Manual is to find out equivalence of the Ministerial posts with that of Executive posts (Head Constable being a holder of such a post as mentioned in the status finding provision) for some administrative and financial purposes; and the holder of the Ministerial post cannot be treated like that of the corresponding holder of Executive post for all purposes, so much so, as to obviate the difference between the two altogether. Despite what has been mentioned in the Manual in this regard, the two posts remain different, according to us; and so, even if what has been stated in the Manual were to apply to the employees like the petitioners after coming into force of the Act, on which aspect we express no view, the same cannot assist the petitioners.

6. This is not all. We find that the aforesaid Rules do not at all deal with the mode of enrolment of Lower Division Clerks. The same is governed by what has been provided in Indo-Tibetan Border Police Force (Lower Division Clerk) Recruitment Rules, 1973 which were made by the President of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution. These rules continue to apply because of what has been stated in rule 187 of the Indo-Tibetan Border Police Force, 1994.

7. In view of the aforesaid, we hold that the two petitioners cannot be regarded as member of the armed forces of the Union and as such their service matters would not be beyond the jurisdiction of the Tribunal inasmuch as they have to be treated as "civilians" which would bring into operation section 14 of the Tribunal's Act because of which the Tribunal

A would have jurisdiction concerning their service matters.

8. Writ Petition 687/86 in which the prayer is to prohibit the Tribunal from proceeding further with the adjudication relating to service matter of the petitioner, therefore, stands dismissed. The relief prayed in Writ Petition Civil 751/88, which was ordered to be heard alongwith the aforesaid writ petition, has to be denied as this Court cannot give direction relating to stay of the promotion of the respondents as this matter shall have to be required to be adjudicated by the Tribunal. This Petition, is therefore, closed. It stands disposed of accordingly.

A.G.

Petitions dismissed.