

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 273/2001

New Delhi, this the 23rd day of October, 2001

(A)

HON'BLE SH. V.K.MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

1. Canteen Mazdoor Sabha Regn. No.2542
through Working President
Shri S.P. Khugshai
P-132, Sector 4, Pushap Vihar
New Delhi-17.
2. Shri Pratap Singh Negi
C/o M/o Finance Departmental Canteen
North Block
New Delhi-1.

...Applicants

(By Advocate: Sh. S.L.Hans)

Versus

1. Union of India
through Secretary
M/o Personnel, Public Grievance & Pension
D/o Personnel & Training
North Block, New Delhi-1.
2. Union of India
through Secretary
M/o Finance
North Block
New Delhi-1.

...Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R (ORAL)

By Sh. V.K.Majotra, Member (A)

The applicants have assailed Annexure A-1 dated 16.12.98 whereby Department of Personnel & Training (DOPT) have clarified OM of even No. dated 5.11.98 that it was only meant for placing demands of winter livery items of canteen staff with the N.T.C. but as regards the entitlement of winter uniforms to the canteen employees there was no change in the provisions made earlier in office OM of 29.11.95. It is claimed that as per judgment of the Hon'ble Supreme Court of India in the matter of C.K.Jha and others vs. Union of

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India and others canteen employees of the non-statutory departmental canteens have to be treated as Central Govt. servants and are entitled to all benefits which a Central Govt. servant is normally entitled to. It is alleged that whereas Group 'C' and 'D' canteen employees are entitled for winter uniform applicable to corresponding Government employees the applicants who are employees of non-statutory departmental canteens have been denied the benefit. They have sought direction to the respondents to provide the applicants winter uniforms as available to Group 'C' and 'D' canteen employees of departmental canteen/tiffin rooms as available to Central Govt. employees.

2. The respondents in their counter have stated that the applicants have not made any representation to the respondents and that the OA is not maintainable for misjoining of parties as well. They have also stated that cause of action having arisen in the year 1995 as per OM dated 29.11.95 the OA is time barred. According to the respondents no comparison can be drawn by applicants with Group 'C' and 'D' employees of the Central Secretariat. The respondents have also pointed out that according to the policy decision taken by the respondents in respect of uniforms the applicants have not been treated at par with Group 'C' and 'D' employees of the Central Secretariat. The applicants have filed the rejoinder as well.

3. We have heard the learned counsel of both sides and considered the material on record.

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4. At the outset the learned counsel of the respondents raised objection in respect of MA-249/2001 contending that whereas in the MA the applicants have stated that the matter relates to casual appointment/temporary status of the applicants in order of seniority in service, in the OA the applicants have demanded benefit of winter uniforms at par with the Group "C" and "D" employees of the Central Government. Learned counsel stated that MA-249/2001 and the OA do not have any nexus between them, and therefore, the OA is not maintainable. On the other hand, the learned counsel of the applicants, Sh. S.L.Hans, stated that since bulk of his clients are causal labour and Group "C" and "D" employees, by mistake he has mentioned in MA-249/2001 that the matter relates to casual employment/temporary status, while the OA relates to the demand for supply of winter uniforms to the applicants. In our view, this is a minor technical mistake which can be overlooked and the applicants allowed to join.

5. Learned counsel of the respondents further stated that Annexure A-5 dated 17.3.91 of the respondents is a policy decision taken by the Govt. on scales and rates of dress material for uniforms and their stitching charges and rates of shoe; it was issued after the Supreme Court's judgment in the matter of C.K.Jha (supra) and the Government had taken a conscious decision as to entitlement of the canteen employees alongwith the prescription of maximum rates for individual items. He stated that respondents had taken a policy decision on the subject as per OM dated 29.11.1995. Learned counsel referring to 1995 (6) SCC 515 Sher Singh and others vs. Union of India and others contended that a policy decision being involved in the matter this Tribunal could not adjudicate as policy decisions are not subject to judicial review.

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6. Learned counsel of the applicants contended that vide OM dated 29.11.95 the respondents had only revised the cost ceilings of various items of uniforms for canteen employees and not considered the pattern for provision of uniform/livery items to such employees. Thus, the respondent have not taken any policy decision in respect of the pattern for provision of uniform/livery items for the canteen employees. Learned counsel further drew our attention to Annexure-RC dated 28.9.2001 whereby the applicants have in their rejoinder submitted a chart of various departments/Ministries of Union of India who are supplying uniforms to the non-statutory canteen employees after the aforestated order dated 1.10.91 of the Hon'ble Supreme Court.

7. Learned counsel of the respondents contended that he had made enquiries from the DOPT who denied that they have taken any decision regarding issue of winter uniforms to the non-statutory canteen employees at the scale of Group 'C' and 'D' employees of the Central Government. DOPT also according to the learned counsel denied knowledge of any Ministries/Departments issuing winter uniforms to such employees at par with Group 'C' and 'D' employees of the Central Government.

8. On perusal of Annexure-4 dated 15.6.90 and Annexure-5 dated 29.11.95 we find that whereas the pattern for provision of uniform/livery items to canteen employees have remained the same in later circular, the respondents have only revised the maximum rates prescribed for various articles of authorised uniforms. We have read and re-read the circulars and we find that the respondents have not considered at all

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the issue of pattern for provision of uniform/livery items to the canteen employees after the Supreme Court had given their decision in the matter of C.K.Jha (supra). Clearly the respondents have not taken any policy decision in terms of the Supreme Court judgment regarding the pattern for provision of uniform/livery items for canteen employees. It is imperative, therefore in the interest of justice to call upon the respondents to consider the issue of pattern for provision of uniform/livery items to canteen employees considering the status accorded to them by the Hon'ble Supreme Court vide their order dated 11.10.91. The respondents shall pass orders in the above terms within a period of 2 months from the date of communication of these orders. The OA is disposed of in the above terms. No costs.

Kuldeep
(KULDIP SINGH)

Member (J)

V.K. Majotra
(V.K. MAJOTRA)

Member (A)

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