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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Hon'ble Shri Justice V.Rajagopala Reddy, Vice Chairman(J)

Pre-delivery order in
Original Application No. 429 of 1998

is sent herewith for consideration.

2. I have already signed the order. Hon'ble VC(J) may sign if he approves and to be on the safe side can authorise any Member for pronouncement.

With Regard,

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D
N. Sahu
Member (Admnv) 2

I respectfully concur,
for judgment.
CAJ
28/6

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.429 of 1998 decided on 27.6.1999

Name of Applicant : Prahlad Prasad & others

By Advocate : Shri A.K.Trivedi

Versus.

Name of respondent/s Union of India & others


By Advocate : Mrs. P.B.Verma

Corum:

Hon'ble Mr. Justice V.Rajagopala Reddy, VC(J)

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No


(N. Sahu) 28.6.99
Member (Admnv)

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 429 of 1998

New Delhi, this the 29th day of ~~March~~^{June}, 1999
quasimble

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE SHRI N. SAHU, MEMBER (A)

1. Prahlad Prasad, S/o Shri Gauri Prasad.
2. Prabhu Prasad, S/o Shri Gaya Prasad.
3. Balmiki Prasad, S/o Shri Suresh Raj.
4. Shiv Narain Yadav, S/o Shri Sukh Dev Yadav
5. Param Hans Yadav, S/o Shri Rameshwar Yadav.
6. Bhima Rao, S/o Shri Lok Nath.
7. Mata Din Pal, S/o Shri Ganga Din Pal

The Applicant No.1 to 6 are working as Mess Boy and Applicant No.7 working as DS Mali and all the applicants are employed in S.N.C.O.'s Mess of No.3 Wing, Air Force Station, Palam, Delhi Cantt-110010.

-APPLICANTS

(By Advocate: Shri A.K. Trivedi)

Versus

1. Union of India, through It's Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi.
3. Air Officer Commanding No.3 Wing, Air Force Station, Palam, Delhi Cantt-110010.

-RESPONDENTS

(By Advocate: Mrs. P.B. Verma)

O R D E R

By N. Sahu, Member (Admnv-)

The prayer in this Original Application is to direct the respondents to pay minimum wages to the applicants from the date of their engagement and to extend the same benefits to them as are applicable in the case of employees of departmental canteens/ Tiffin rooms of other Ministries in accordance with OM dated 17.12.1992. It is also prayed that the respondents treat the applicants as civilian Government employees of the Air Force by extending to them all consequential benefits.

[Signature]

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2. The applicants are paid wages at a consolidated rate of Rs.1,000/- each and the affairs of the applicants are controlled by the Officer-in-charge of the Mess committee. This salary is stated to be low considering their nature of work and duty timings. Non payment of minimum wages is stated to be a clear case of discrimination and violation of Articles 14 and 16 of the Constitution of India.

3. The facts are that the Senior Non-Commissioned Officers (in short 'SNCO') Mess is run by the Air Force on 'no profit no loss' basis. As the expenses on the building and supervisory man power are met by the Government, it is urged that they are covered by the definition of 'departmental canteen'. The applicant relied on the decision of the Supreme Court in the case of M.M.R Khan and others Vs. Union of India and others, AIR 1990 SC 937. The applicants are working for the last 10 years. The Mess is a permanent feature of the Air Force and, therefore, it is urged that the work rendered by them is permanent in nature. Their representation having not been disposed of they are before this Tribunal for the above reliefs.

4. The respondents after notice have stated that this Tribunal has no jurisdiction to entertain this OA as the applicants are not civilian employees appointed to any defence service. They are engaged on part time basis as Helpers by the members of the SNCO at Air Force Station Palam, New Delhi. The wages to the applicants are paid out of the contributions made by the individual members of the said Mess. It is from such collections that wages are paid every month. It is also clearly stated that no monetary

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grant is received from the Government to run the said Mess. The SNCO Mess does not fall under the category of canteen/Tiffin room. The respondents objected to the interim order dated 1.4.1998 restraining them from disengaging their services.

5. On the other hand it is submitted that the applicants are covered by a decision of the Hon'ble High Court in the case of Southern Naval Command Civilian Employees' Association Vs. Flag Officer Commanding in Chief and others, 1998(1)SLJ 135 wherein it was observed that casual labour working in defence service fall within the jurisdiction of the CAT under Section 14 of the Administrative Tribunals Act, 1985. The Mess boys are stated to be employed by the Chief Administrative Officer of the Air Force Station and are issued with security passes. The functional purpose of a Tiffin room/canteen and the Mess in which the applicants are working are the same. Therefore, it is submitted that they may be declared as Government employees on the line of the OM referred to above. With regard to jurisdiction it is submitted that the applicants have worked for several years in these Messes and all of them have become over-aged now for any other employment in the Government or any other organization. It is also stated that the articles for preparation of food are freely provided by the Government in so far as the food is prepared for unmarried persons who are not entitled for ration money. As a welfare measure only married armed force personnel get the food from the Mess on payment basis. It is, therefore, not a non-public fund organization. Their cases have been compared with that of parcel porters.

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6. The decision of the Hon'ble Supreme Court in the case of Union of India and others Vs. Subir Mukharji and others, 1998(2) SCSLJ 17 has been cited wherein it is stated that the Supreme Court directed these persons to be absorbed as regular Group 'D' employees. The decision of the Principal Bench of the Tribunal in the case of Shri Leela Ram and 17 others Vs. Union of India and others, OA No.311 of 1990 decided on 14.12.1990 was also cited wherein the applicants worked in the Army Hospital Probationary Nurses School Mess. In that case it was found that all the expenses in connection with the training of the Nursing students are met by the Government for running the Mess. The Government sanctioned some amount every year for running the Mess. The Tribunal found that some of the applicants have been engaged since 1953. They wanted parity of pay scales with those employees working in the Raj Kumari Amrit Kaur College of Nursing, New Delhi, a part of the Health Ministry. Those persons continued to work there because of the quarters provided to them. The Tribunal found a master and servant relationship between the Union of India and the applicant in that case and, therefore, held that they should be treated as Government servants. The budget provision in that case for payment of wages had been found to be sanctioned by the Government. Under these circumstances the Tribunal directed for creation of regular posts and the absorption of the applicants against the same in appropriate pay scale and also for payment of retirement benefits. In the case of Southern Railway Employees Cooperative Stores Workers Union Vs. The Secretary, Ministry of Railways and others, 1991 (1) ATJ 220, wherein on the facts of that case, the

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Tribunal held that employees be treated as Railway servants and directed parity in pay scales. The Hon'ble Supreme Court in the case of M.M.R.Khan (supra) held as under -

"The admitted facts, however, are that these canteens have been in existence at their respective places continuously for a number of years. The premises as well as the entire paraphernalia for the canteens is provided by the Railway Administration and belong to it. The employees engaged in the canteens have also been in service uninterruptedly for many years. Their wages are reimbursed in full by the Railway administration. The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the Railway Administration whether the Agency is the staff committee or the society. In fact, as stated by the Railway administration in its establishment Manual the legal responsibility for running the canteen ultimately rests with it, whatever the agency that may intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the Administration".

(emphasis supplied by us)

It is because the above conditions were satisfied that canteen workers were treated as Railway servants and separate recruitment rules were provided for them. The Tribunal found that the consumer cooperative stores as devised by the Railways have been created and allowed to function for the benefit of the Railway employees more or less on the same line as the canteens. Under these circumstances the employees of the cooperative stores were directed to be treated as Railway servants and given the pay scale that are given to regular Government servants. In Subir Mukharji's case (supra) labourers were engaged through a contractor in the Eastern Railway who worked continuously and uninterruptedly since 1988. The Supreme Court held that the direction given by the Tribunal to absorb the labourers as regular Group'D' employees bearing in mind the quantum of work available on perennial basis and subject to their fitness are quite fair.

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7. The respondents on the other hand cited the decision of the Chandigarh Bench of the Tribunal in the case of Shri Vijender Singh Vs. Union of India and others, OA 954/HR of 1997 decided on 2.6.1998. Relying on Om Prakash and others Vs. Union of India, 1997(1) SLJ (CAT) 486 the Bench held that the employees of such Unit run canteens are non-statutory, they are not holders of civil post under the Central Government, hence the CAT has no jurisdiction over their grievances. A similar view was taken by the Jodhpur Bench in the case of Probir Kumar Jena, Conductor at 255 SO, Air Force Bikaner Vs. Union of India by its order dated 24.2.1997 in OA No.316/96.

8. We have carefully considered the submissions of the rival counsel. We are satisfied that this is a case where we do not have any jurisdiction and even if we assume for the sake of argument that we have jurisdiction, the applicants do not have a case on merits. From the statement placed by the respondents we are satisfied that the Mess is privately run by the members who are its beneficiaries. The salary of the applicants is paid not from any Government fund but from the contribution of its members. Their activities are supervised and controlled by certain representatives of the Mess members. This institution is not different from any other private Mess. The Government does not give any grant for running of the Mess. The ration money that would have been otherwise payable to any unmarried officer is being paid for his sustenance and running of the Mess. This is no contribution from the Government for the Mess. There is no statutory control. No expenditure is voted from out of any

account voted towards expenditure for the Mess. The Government has no say whatsoever in the running of this Mess. At any particular time if there are no members who would like to participate in the Mess and take food in the Mess, it can be closed and the employees can be asked to leave their jobs. The applicants do not have any vested right for a post. They are no different from those engaged by a private hotel. Under the circumstances we are unable to comprehend as to what rights the applicants have to be treated as Government servants or civilian officers of the Defence set up. The cases cited are decided on the ground that fund is given partly or wholly by the Government, supervision is done by the Government and it has a say and stake in the continuation of the organization, be it a Mess or a canteen or a store or a society. Long years of work per se do not bestow any vested enforceable right for treating the applicants as Government servants.

9. In the result, the OA is dismissed. No costs.

N. Sahu
(N. SAHU)
MEMBER(A)
29.6.99.

V. Rajagopala Reddy
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(JJ)