

Central Administrative Tribunal
Principal Bench

0.A.No.1866/95

Hon'ble Justice Chettur Sankaran Nair(J), Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 29th day of October, 1996

1. Army Headquarters Canteen Employees
Association, New Delhi and Others
Through its General Secretary
Shri V.B.Mathur.
s/o late Shri M.B.Mathur
(Swtantrata Sainani)
r/o A-78, Major Bhala Ram Enclave
Pochanpur
New Delhi - 110 045.

2. Shri Y.D.Sharma
s/o Shri M.D.Sharma
r/o 50, New Lahor Shastri Nagar
Delhi - 110 031
Sales Attendant
Army Headquarters Canteen
'Q' Block, Rajaji Marg
(Opp. Sena Bhavan)
New Delhi.

3. Shri Lakshmi Chand
s/o Shri R.S.Singh,
R/o 'D' Block, Gali No.6, Sonia Vihar,
Bazirabad, DELHI-94,labourer, Army HQs.Canteen,
'Q' Block, Rajaji Marg (Opp.Sena Bhavan),
New Delhi.

4. Shri Brij Pal Singh,
S/o Shri Bahu Ram,
R/o B-38, Mandawali(Unchepar), Delhi-92,
Labourer, Army HQs. Canteen,'Q'Block,
Rajaji Marg (Opposite Sena Bhavan)
New Delhi.

Applicants

(through Sh. S.M.Rattanpal, advocate)
with Shri O.P.Khokha, Advocate)
versus

1. Union of India through Secretary
to the Government of India,
Ministry of Defence(Dept.of Defence),
South Block, New Delhi.

2. Quartermaster General,
Army HQs and ex-officio
Chairman Governing Body-Army HQs Canteen, 'O'
Block, Rajaji Marg, New Delhi.

3. Addl. Director General of Supplies & Transport,
Army Hqs, Sena Bhavan, New Delhi & ex-officio,
Chairman Managing Committee, Army HQs. Canteen,
New Delhi.

Respondents

(through Sh. B.K. Aggarwal for Respondent No.1 and
Ms. Gurmeet for Respondents No.2 & 3)

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ORDER

Shri R.K.Ahooja, Member(A)

Applicants are challenging the induction of Army Personnel in the Army Headquarters Canteen in contravention of Army Headquarter Canteen standing order of 1973 (A-VI). As per this order, serving military personnel will not be employed in canteen and all canteen employees will be Civilians, preferably, Ex-serviceman. In Miscellaneous Application No.2612/95, the applicants who are civilian employees also allege that the induction/selection of army personnel has resulted in their promotion prospects being adversely affected and by way of illustration they state that despite selections having been made for promotion to the posts of Sales Attendants and Sales Clerks, necessary orders of appointment have not been issued so far.

2. Respondents have raised a preliminary objection of jurisdiction of this Tribunal. They claim that the Army Canteens are private undertakings of the Army units, their funds are non-government funds and their employees are working under the terms and conditions mutually agreed between the units and the employees. This position has been confirmed in Defence Ministry's Office Memorandum No.B0CCS/00101/Q/CAN/D (MOV) dated 07.11.1977. Further more, the applicants association is registered under the Trade Union Act, 1936 and since there is no notification under Section 14(2) of the Administrative Tribunals Act, 1985, in respect of this body their application cannot be entertained by this Tribunal.

3. At the very outset, this preliminary objection is rejected. As pointed out by the applicants, in a similar case filed by the All India Civilian Employees Canteen Association for revision of their wages, the Chandigarh Bench of this Tribunal

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had found jurisdiction but had rejected the claim on the ground of limitation. The Supreme Court granting Special Leave in its order in SLP No.10069/92 dated 03.11.1993, remanded the case to the Tribunal for decision on merits. The respondents in the present Original Application contend that the issue of jurisdiction was not before the Supreme Court. It is clear from a perusal of the order of the Hon'ble Supreme Court, A-II that the plea of jurisdiction was not taken by the respondents and the Additional Solicitor General himself suggested that the matter may be remanded to the Tribunal for disposal on merits. The respondents have thus already accepted the jurisdiction of this Tribunal before the Supreme Court.

4. Another objection raised by the respondents is that there is no impugned order against which relief is sought by the respondents. They have, however, not denied the induction of service personnel. The contention of the applicants is that such induction is contrary to respondents own standing orders and it adversely affects their promotion prospects. Thus even in the absence of any specific order, there is a cause of action for the applicants for claiming relief. Hence, this objection is also rejected.

5. The position as regards the merits of the case is however, different. The applicants have contended that there is a standing order, A-II which unequivocally prescribes that no service personnel would be employed in the canteen. That service personnel have been inducted is not denied by the respondents even though they call this induction a 'deployment' and not 'employment'. The respondents however, state that this is a temporary arrangement with limited objectives. According to them there have been complaints regarding unauthorised personnel availing facilities of the canteens and therefore, army personnel

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have been deployed to verify the authorisation cards in order to eliminate misuse of the facilities. Further more, the management is computerising various functions and as suitable service personnel are not available from amongst the civilian employees, per force army personnel have to be used. Some deployment of service personnel is also necessary on account of security considerations. The respondents vehemently deny that the deployment of service personnel has resulted in withholding of appointment orders in respect of selected civilian staff against promotion posts; they attribute the delay to the non-production of requisite educational certificate. On this point there appears to be a controversy on facts between the two sides. The applicants also allege malafide on the part of the respondent and say that the induction of army personnel is only to ensure that the Unit Commanders can save on the pay of civilian staff, so that the resultant funds can be used at their own discretion.

6. We have given careful consideration to the submissions of the counsel on both sides. The learned counsel for respondents submits that on the completion of scrutiny of authorisation cards and computerisation army personnel would be withdrawn by 31.1.1997. However, the learned counsel for respondents is unable to give an undertaking that in future such deployment will not take place, even if it is so required due to special circumstances in the opinion of the management committee of the Army Canteens.

7. We find that standing orders (A-II) of 1973 have been issued under the authority of Regulations of Army which in turn has been issued under the authority of the Government of India. The regulations are non statutory. However, it is well settled that where government do not have any statutory rules under Article 309 of the Constitution, the Government can fill up the

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gaps and supplement the rules by issue of administrative instructions not inconsistent with the rules already framed (Union of India Vs. K.P.Joseph and Others, 1973(1) SCC 194). Therefore, the standing orders of 1973 do vest applicants with a justiciable right though only to the extent that their interests are not adversely affected. It is not the case of the applicants that any civilian employee has been retrenched. They also concede that, so far, the promotion policy decided in a meeting with the respondents has been strictly followed. It is also on record that selections have been made for two more vacancies to be filled through promotions and appointments await only the completion of formalities. We have the statement of the learned counsel for respondents that the present deployment of the army personnel is a temporary measure and it is expected that army personnel will be withdrawn by the end of the January, 1997, though the right of deployment in case of any exigency has been reserved. We also notice that the respondents have annexed with their reply a copy of the report of the enquiry committee which on going into the affairs of the canteen found certain irregularities and deficiencies.

8. In the totality of the circumstances, we find that though instructions regarding non-employment of the army personnel in the canteens as per standing orders of 1973 hold the ground till respondents choose to vary the same, the temporary deployment of army personnel to meet a specific exigency such as computerisation or verification of authorisation cards does not militate against these orders so long as such deployment does not result in harming the legitimate interests of the applicants.

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9. In the light of the above discussions, we consider that the application can be disposed of with the directions that the respondents will within a period of one month from today decide the cases of promotion for which selections have been made and issue the necessary appointment orders. The respondents are also directed that they will not displace any of the civilian employees already posted or to be posted against any of the sanctioned posts, which would have the effect of depriving the applicants of promotions according to the terms and conditions of the existing arrangements between parties.

10. The application is disposed of accordingly with the above directions. Parties will bear their own costs.

Dated, the 29/10/1996.

~~R.K. Ahuja~~
(R.K. AHOOJA)
MEMBER(A)

/rao/

~~Chettur Sankaran Nair~~
(CHETTUR SANKARAN NAIR (C))
CHAIRMAN