

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER(A)

O.A. NO. 1546/1996

NEW DELHI, THIS 3(S)- DAY OF March, 1997

(9)

SHRI JAGDISH RAM  
S/o Lt. Sh. Ghazitu Ram  
A-37C Gali No.15  
Raja Puri  
Uttam Nagar  
NEW DELHI-59

..APPLICANT

(By Advocate - Shri K.C. Mittal)

VERSUS

1. UNION OF INDIA, through  
The Secretary  
Ministry of Urban Development  
Nirman Bhawan  
NEW DELHI
2. The Manager  
Government of India Press  
Minto Road  
NEW DELHI
3. The Directorate of Printing  
Nirman Bhawan  
NEW DELHI

..RESPONDENTS

(By Advocate - Shri B. Lall)

ORDER

The applicant was appointed as a Halwai in a departmental canteen in the year 1955 and retired on 30.11.1994 on attaining the age of 60 years. He is aggrieved that despite the notifications declaring him a government servant from 1979 and judgements of the Hon. Supreme Court, the respondents have denied him the benefit of retirement pension. The respondents in reply claim that all the retirement benefits due to the applicant have been settled and the cheques relating to payment are lying with respondent No.2 which would be collected by the applicant. However, they deny that the applicant is entitled to retirement pension

as he was declared a government servant only w.e.f. 29.8.85.

2. I have heard the ld. counsel on both sides. Shri K.C. Mittal appearing for the applicant drew my attention to the M/o Home Affairs notification No.6(2)/23/77 dated 11.12.1979 (A-1) according to which the Government of India had taken a decision to treat w.e.f. the first day of October 1979 as "all posts in the canteens and tiffin rooms run departmentally by the Government of India as posts in connection with the affairs of the Union". He also points out that Annexure V of the said notification lays down that the post of Halwai will carry the pay scale of Rs.240-380. He also argued that the OM dated 30.1.1992 (A2) on the basis of which the applicant is deemed to have become a government servant only w.e.f. 29.8.85 states that canteen employees automatically would be entitled to the rules applicable to government servants from 29.8.85 or the date of their appointment, whichever is earlier. Since the date of appointment was way back in 1955 he would be entitled to count his entitlement for pensionary benefits from 1955 or at least from 1979 in terms of A-1.

3. Shri B. Lall, counsel for the respondents, on the other hand submits that in terms of Supreme Court judgement in the case of M.M.R. KHAN & ORS. VS. UOI & ORS. JT 1990 (3) SC 1, the applicant was entitled to count his services as government servant only w.e.f. 1985.

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4. I have carefully considered the matter. As Shri Mittal rightly points out, the employees of departmental canteens were declared as holding civil posts in terms of the 1979 order which may profitably be reproduced below.

"It is hereby notified for the information of all concerned that the Government of India have taken a decision to treat, with effect from the 1st day of October, 1979, all posts in the canteens and tiffin rooms run departmentally by the Government of India as posts in connection with the affairs of the Union. Accordingly present and future incumbents of such posts would qualify as holders of civil posts under the Central Government. Necessary rules governing their conditions of service will be framed under proviso to Article 309 of the Constitution to have retrospective effect from 1st day of October 1979."

It is thus clear that while the petitioner had been declared holder of a civil post w.e.f. 1.10.79, the rules governing his conditions of service under proviso to Article 309 of the Constitution were to be framed later but these were also to be made applicable from 1.10.1979. The OM dated 30.1.1992 also states as follows:-

"Keeping in view that the canteen employees have been declared as Government servants, all the rules applicable to government servants such as those relating to entitlement of leave, bonus, pension, medical facilities, O.T.A, disciplinary rules, conduct rules etc. should be deemed to have become automatically applicable to them from 29.8.1985 or the date of their appointment whichever is earlier, as canteen employees.

The operative word is "whichever is earlier". In this case, the date of appointment is earlier than 29.8.85. Even if it is said, as argued on behalf of the applicant, that the rules were framed in 1990 and were made applicable from 1985

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(12) only, then in terms of notification (A-1) these had to be deemed to be operative from 1.10.79.

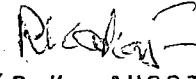
5. The 1d. counsel for the respondents submits that the Hon. Supreme Court in the case of M.M.R. Khan (Supra) was considering petitions concerning workers in canteens run in different railway establishments. The conclusion was that the <sup>relevant</sup> orders indicated <sup>the employees in</sup> statutory canteens as well as those engaged in non-statutory recognised canteens in the Railway Establishments were railway employees and were to be treated as such. It was noticed that the Railway Board had already treated employees of all statutory canteens as railway employees w.e.f. 22.10.1980. In the case of remaining non-statutory recognised canteens, it was decided in the judgement that they would be treated as railway employees w.e.f. 1.4.1990. The question therein being dealt was of statutory canteens which were to be provided compulsorily in view of the provisions of Section 46 of the Factory Act 1948 and even there the canteen employees had been declared by the railways as railway servants w.e.f. 22.10.80. In the present case, the government had vide notification of 11.12.1979 already declared all those working in canteens and tiffin rooms run departmentally by the Government of India as holders of civil posts. Since it is not the contention of the respondents that the applicant was not holder of such a civil post, he was entitled to the benefit of the status of a government servant once this status was conferred by the order of 30.1.1992 (A-2) w.e.f. that date.

6. The plea of the respondents, therefore, that the benefit could be extended from 1985 onwards because of the M.M.A. Khan judgement (Supra) is not tenable because no

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distinction was drawn in the 1979 order between statutory and non-statutory canteens but the reference was only in respect of canteens run departmentally by the Government of India.

7. In view of the facts and circumstances of the case, the O.A. is allowed. The respondents will grant pensionary benefits to the applicant treating him as a government servant for purposes of pensionary benefits from 1.10.1979. The arrears of pensionary benefits will be paid to the applicant within three months of the date of communication of a copy of this order. No costs.

  
(R.K. AHOOJA)  
MEMBER (A)

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