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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1686/93

NEW DELHI THIS THE 4TH DAY OF FEBRUARY, 1994.

HON'BLE MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN (J)
HON'BLE MR. B.N. DHOUDIYAL, MEMBER (A)

1. Sh. Bishamber Dutt
S/o Shri Bhola Dutt
r/o House No. 304,
Jor Bagh, Kotla Mubarakpur
New Delhi.
 2. Shri Sokhi Roy
S/o Shri Ceno Roy
resident of E-15, San Martion Marg
Chankaypur (C.P.W.D. Flats)
New Delhi.
 3. Mahabir Singh
s/o Shar Madan Singh Rawat
s/o Q.No. 348-B, Asharam Gali
Gali No. 4-A, Subedar Chowk
Mandavali Phasalpur
New Delhi-92
 4. Shri Gopal
s/o Shri Tota Ram
r/o B-7, Dakshin Puri,
New Delhi-62.
- Applicants

BY ADVOCATE SHRI JITENDRA KUMAR SINGH

1. Union of India
through its Secretary,
Ministry of Labour/Shram Mantralaya
Sharam Shakti Bhawan
Rafi Marg
New Delhi-110001.
 2. Managing Director
through its Chairman (Director Administration)
Departmental Canteen
Ministry of Labour
Rafi Marg
New Delhi.
- Respondents

BY SENIOR ADVOCATE SHRI P.H. RAMCHANDANI.

ORDER (ORAL)

JUSTICE S.K. DHAON, VICE-CHAIRMAN (J):

The applicants are casual workers. Admittedly, they were employed in the canteen run by the Ministry of Labour. They have approached this Tribunal with the following prayers:

- (a) direct the respondents to regularise their services and treat them as permanent regular employees from the date of their initial appointment.
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- (b) direct the respondents to give all the benefits to them from the beginning of their services which other regular employees of the departmental canteen of the Ministry of Labour are getting.
- (c) restrain the respondents from appointing any outsiders on the permanent posts of cook, tea-maker, waiter and wash boy/sweeper which are vacant.
- (d) direct the respondents to grant temporary status to them till the regularisation of their services.

2. A counter-affidavit has been filed on behalf of the respondents. Counsel for the parties have been heard. We are, therefore, disposing of this OA finally.

3. In para 4 (a) of the OA, it is asserted that the applicants have been working continuously in the departmental canteen of the Ministry of Labour for the last several years. It is also asserted that applicant No.1 joined on 20.2.1982, applicant No.2 on 11.7.1983, applicant No.3 on 5.8.1985 and applicant No.4 on 5.10.1987.

4. The averments in para 4(a) have not been denied. We have, therefore, to proceed on the assumption that the respective dates given by each of the applicants of their joining as daily rated workers in the departmental canteen are correct. At the Bar, the only relief pressed is that the respondents should first give each of the applicants a temporary status and thereafter consider their respective cases for the regularisation of their services.

Singh

5. To the counter-affidavit filed, a photostat copy of the Office Memorandum dated 10.9.1991 issued by the Ministry of Personnel in the Department of Personnel and Training has been annexed. The subject of this memorandum is: " Grant of temporary status and regularisation of casual workers- formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, judgement dated 16th Feb. 1990 in the case of Raj Kamal & others vs. U.O.I.". In the body of the said memorandum, it is inter alia recited that the guidelines contained in the Office Memorandum dated 7.6.1988 may continue to be followed and the grant of temporary status to the casual employees who are presently employed and have rendered one year of continuous service in Central Government offices other than the Department of Telecom, Posts and Railways may be regularised by the scheme as appended.

6. Learned counsel for the respondents has very fairly stated at the Bar and has also mentioned in the counter-affidavit filed on their behalf that the cases of each of the applicants would be considered for regularisation in accordance with the scheme referred to in the said memorandum dated 10.9.1993. That should end the matter.

7. Learned counsel for the applicants has strenuously urged that in view of the contents of paragraph 12 of the judgement of the Supreme Court in the case of M.M.R.KHAN AND OTHERS vs. UNION OF INDIA AND OTHERS (1990(Supp) SCC 191), the applicants should be treated to be Government servants with effect from 1.10.1979. On the other hand, the learned counsel for the respondents

has brought to our notice the final order passed by the Supreme Court in Writ Petition Nos. 6189 to 7044 and 8246 to 8255 on 11.10.1991 in the case of SHRI C.K.JHA & ORS. ETC. versus UNION OF INDIA in support of his argument that for the purpose of giving temporary status to the applicants and for the purpose of regularising their services, they (the applicants) should be treated as Government servants with effect from 1.10.1991. We may note that in the case of SHRI C.K.JHA & ORS(supra), the observations of the Supreme Court, as relevant, are:-

"By an interim order dated 26.9.1983 certain reliefs had been granted. In respect of the reliefs already granted this order shall be deemed to be operative from that date. In case any further benefits are admissible, those will be admissible from 1.10.1991".

8. We have before us a copy of the Office Memorandum No.12-5/91-Dir(C) dated 17/23-11-1992 printed on page 2 of the Journal Section of the All India Services Law Journal 1993 Volume Three. From a reading of the same, we find that the interim order passed by the Supreme Court in the case of Jha(supra) was:

"We direct that pending, hearing and final disposal of these petitions all employees of non-statutory canteens will be paid at the same rate and at the same basis on which employees of statutory canteens are being paid."

Thus it is clear that the interim order passed by the Supreme Court in the case of Jha and other connected cases was confined to the payment of emoluments. The same had nothing to do either with the grant of temporary status or regularisation of their services. In this

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background, we may now examine the decision of the Supreme Court in the case of M.M.R.KHAN AND OTHERS(supra).

9.. In M.M.R.KHAN & ORS(supra), the precise controversy was as to whether the employees of the non-statutory canteens of the Railways were Government servants. Their lordships considered the entire material which was placed before them for giving a decision on the controversy. Their lordships ultimately held that the persons employed by the Railways in non-statutory canteens were too entitled to be considered as Railway employees with effect from 1.4.1990(para 31, AIR 1990 SC 937).

10. We may now read para 12 of the judgement of the Supreme Court in M.M.R.KHAN & ORS. vs. UNION OF INDIA AND OTHERS(1990 (Supp) SCC 191) (supra). We have read and re-read the contents of the said paragraph but we are unable to find any observation of their lordships of the Supreme Court that the employees of the non-statutory canteens and establishments, other than the Railways, were to be treated as Government employees from a certain date. In our opinion, paragraph 12 is of no assistance to the learned counsel for the applicants.

11. On 29.1.1992, Government of India, Ministry of Personnel, Public Grievances and Pensions issued an Office Memorandum, a true copy of which has been placed before us in the form of Annexure-I to the counter-affidavit filed on behalf of the respondents. In this memorandum, a reference is made to the judgement of the Supreme Court dated 11.10.1991 given in Writ

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Petition Nos.6189-7044 and 8246-55 - C.K.JHA
AND ORS.(supra). The portion of the Office
Memorandum, as material, runs:

"Consequent upon the said judgement of the Hon'ble Supreme Court, it has been decided that the employees of the Non-statutory Departmental/Cooperative canteens/Tiffin rooms located in Central Government Offices should be treated as Government servants w.e.f.1.10.1991. The employees of these canteens may, therefore, be extended all benefits as are available to other Central Government employees of comparable status from 1.10.1991 except GPF, Pension and Group Insurance Scheme in respect of which a separate communication will follow."

The aforesaid memorandum was followed by Office Order dated 18.6.1992 . In the said office order, it was mentioned that the employees of the Ministry of Labour Departmental Canteen will be treated as Government servants with effect from 1.10.1991.

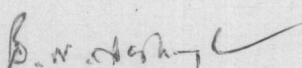
12. We have already referred to the scheme dated 10.9.1993. We have already stated that the respondents have clearly stated in the counter-affidavit that the cases of the applicants would be considered in accordance with the scheme on the footing that they are Government employees with effect from 1.10.91.


13. So far as the disposal of this OA is concerned, the question as to whether the applicants became Government employees anterior to 1.10.1991 is purely academic. We, therefore, refrain from entering into that controversy. We, however, make it clear that, if the applicants can drive any advantage, other than of being given temporary status and thereafter regularisation, on the basis that they had been given appointment on a date prior to 1.10.1991, That controversy will remain open to the applicants.

Sd/-

14. The learned counsel for the applicants has urged that this is a fit case where we should give a specific direction to the respondents to consider their cases for first giving them temporary status and thereafter considering them for regularisation within a specified time. This request appears to be reasonable. We accordingly direct the authority concerned to consider the cases of the applicants for being given temporary status in accordance with the scheme dated 10.9.1993 within a period of three months from the date of presentation of a certified copy of this order by any of the applicants before it. Thereafter, the applicants shall be considered for regularisation of their services, if and when permanent vacancy arises. It goes without saying that the cases of the applicants shall be considered on merit and in accordance with law.

15. With these directions, the OA is disposed of finally. There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER(A)


(S.K. DHAON)
VICE-CHAIRMAN(J)

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