

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No.1009/93

Dated: 21.10.93

Vidya Nand Sharma

Applicant

Vs.

Union of India & Ors.

Respondents.

Shri J.C. Madah, Counsel for the Applicant

Ms. Maninder Kaur, Counsel for the Respondents.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGEMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.1009/93, Vidya Nand Sharma, applicant Vs. Union of India & Ors., respondents, under Section 19 of C.A.T. Act 1985 has been filed against the Memorandum dated 14.10.92 issued by respondent No.2, i.e. Medical Superintendent, Lok Nayak Jai Prakash Narayan Hospital, New Delhi vide annexure

1. It is a memo of charge-sheet served on the applicant vide letter No.Misc.(Canteen)/Vig./JPH/92/83 dated 10.10.92. It contains 7 articles of charges at annexure 1 and in support of these articles of charges we have imputations of misconduct ~~at~~ annexed with annexure A-1.

2. The applicant was appointed initially as Manager of 'C' type Canteen in the pay-scale of Rs.240-418 in the Departmental Canteen of CPWD in A.W.H. Compound, Netaji Nagar, New Delhi w.e.f. 13.10.82 and served in that capacity till 31.10.84.

B

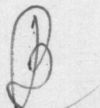
.....2....

11

Subsequently he was appointed as Manager of 'A' type Canteen in the ~~scale~~ <sup>Scale</sup> of Rs.300-500 in the Departmental Canteen in the office of Chief Engineer (E), CPWD, ~~at~~ <sup>Baridpur</sup> Bhavan, New Delhi where he served from 1.1.85 to 31.3.85. He applied in response to a circular dated 20.11.84 issued by Respondent No.3 for the post of General Manager, Departmental Canteen, Maulana Azad Medical Officer, and associated hospitals, LNJP Hospital and G.B. Pant Hospital, New Delhi in the scale of Rs.425-600. He was selected as G.M. and joined there on 1.4.85. He was placed on probation for six months. The appointment letter stipulated that his services would be governed by rules prescribed by the Directorate of Canteens, Govt. of India Notification dated 11.12.79 issued by Deputy of Personnel & A.R., Ministry of Home Affairs on 1.10.79 which stated that the posts in Departmental Canteens were to be ~~as~~ <sup>treated as</sup> posts under Government of India and the employees would be the holders of civil posts. Further notification dated 23.12.88 laid down the conditions of service of all the employees of Departmental Canteens framed under the proviso to Art. 309 of Constitution and these rules were ~~set~~ <sup>framed</sup> to regulate ~~the~~ <sup>the</sup> method of recruitment and conditions of service ~~stipulated~~ including the conduct and discipline <sup>under</sup> ~~under~~ <sup>rules</sup> GSR-54.

3. Reliefs sought by the petitioner are;

- i) to allow this application with cost in favour of the applicant;
- ii) to pass an appropriate order and issue directions quashing Memorandum dated 14.10.92 at annexure A-1 by declaring it patently illegal, invalid and null and void;
- iii) to pass an appropriate order or issue directions to the respondents declaring that the applicant's conditions of service are to be regulated by the Departmental Canteens Employees



....3....



(Recruitment & Conditions of Service) Rules 1980 for all purposes including conduct and discipline rules and not under CCS(CCA) Rules 1965;

[iv] to pass any other appropriate order or issue any other directions as this Hon'ble Tribunal may deem fit and proper.

There is also a prayer for issue<sup>of</sup> an interim order staying the departmental proceedings against the applicant.

4. Heard the learned Counsels, Shri J.C. Madan for the applicant and Ms. Maninder Kaur for the respondents, and perused the records of the case along with the various annexures filed with the paper book.

5. The main thrust of the arguments of the learned counsel for the applicant is that vide letter No. 6(2)/23/77-Welfare a notification was issued by the Department of Personnel, A.R. & Training, Ministry of Home Affairs to the effect that from 1st October 1978 all posts in Canteens/Tiffin Rooms run departmentally by Govt. of India will be treated as posts in connection with the affairs of Union Government ~~xxxxxx~~ and all present and future incumbents will be treated as holders of civil posts under Government of India. It also stated that necessary rules governing their conditions of service will be framed under proviso to Art. 309 of the Constitution to have retrospective effect from 1st October 1979.

6. In pursuance to the aforesaid circular, Department of Personnel & Administrative Reforms, Ministry of Home Affairs issued the notification dated 23.12.80 as published in Part-II Section 3 Sub-section (1) of the Gazette of Govt. of India under powers conferred by Proviso to Article 309 of the Constitution in the name of President of India. The rules regulated the method of recruitment and the conditions of service of all incumbents present and future, working in

B

13

Departmental Canteens/Tiffin Rooms. These rules have been placed at annexure A-4 of the Paper Book. Administrative instructions were issued on 1st May 1980 followed by second edition in 1988.

7. The learned counsel for the applicant invited our attention to letter No. 27/5/83-Director(C), Department of Personnel & A.R., Ministry of Home Affairs, where it was stated that CCS rules of 1965 were not applicable to the employees of the Departmental Canteens/Tiffin Rooms and these employees were to be governed by rules enshrined in GSR-54 of 17.1.81. The concerned officers were directed to comply strictly with the correct rules to avoid complications. This letter has been marked as annexure A-5 of the paper book. Basing his arguments on this circular and instructions, the learned counsel for the applicant contended that the enquiry order under Rule 14 of CCS(CCA) Rules 1965 against the applicant, Shri Vidya Nand Sharma and the appointment of Enquiry Officer vide order No. F.Misc. (C)/Vig./JPH-92 dated 30.4.93 by Medical Superintendent of LNJP Hospital and Hospital Order (Part-II) No. 608 are not in order and without any authority and force of law and as such are patently illegal and deserve to be set aside by this Hon'ble Tribunal.

8. The learned counsel for the respondents, Ms. Maninder Kaur rebutted the arguments of the learned counsel for the applicant by drawing our attention to the latest developments in the light of the Supreme Court Judgment dated 11.10.91 which declared the employees of Departmental Canteens/Tiffin Rooms as <sup>full</sup> ~~full~~ Central Govt. servants entitled to all benefits to which a Central Government employee is normally entitled. This is contained in letter No. F-2(26)-B(CDN)/92 dated 24.1.92 of Government of India Ministry of Finance, Department of Economic Affairs (Budget Division).

B



14

9. The Hon'ble Supreme Court had ordered certain reliefs in their interim order dated 26.9.83 and final orders were passed vide their judgment dated 11.10.91 which were made operative from the date of interim order, i.e. 26.9.83. The judgment had retrospective effect and all benefits of Central Government employees were to be admissible from the date of final judgment i.e. 11.10.91.

10. In the light of the Hon'ble Supreme Court's judgment notifications were issued regulating their service conditions as Central Govt. employees and declaring their equivalence on the comparable posts under Government letter No. E.II/JPH/Canteen/92 Hospital Order (Part-II) No.5030 dated 28.10.92. This list places the applicant, Shri Vidya Nand Sharma at Sl. No.1 as General Manager fixing his pay as Rs.1760/- in the scale of pay of Rs.1350-2200. A further circular No.F-Deptt. Canteen/JPH/Misc.-92 Hospital Order (Part-II) No.56 dated 7.1.93 was issued whereby the total strength of Hospital Canteen of MAMC was taken on the strength of LNJP Hospital, Government of National Capital Territory of Delhi w.e.f. 11.10.91 i.e. the date on which the Hon'ble Supreme Court delivered its judgment. In this the applicant's name is shown at Sl. No.1. This order superseded the previous Office Memo No. Deptt. Canteen/JPH/Misc./92/4645 dated 14.9.92 and Hospital Order (Part-II) No.5030 dated 28.10.92 insofar as orders relating to induction of these employees in Central Government Service.

11. The circular No. 12/5/91-Director (C) dated 29.1.92 of Ministry of Personnel, P.G. & Pensions (Department of Personnel and Training) lays down that the subsidy to meet the 70% of the

B

....6....

15

wage bill of the staff of these canteens and the grant of interest free loan of 30% balance was to be discontinued w.e.f. 1.10.91 and para 5 of the same letter stipulated that expenditure on payment of pay and allowances to the employees of the canteens is to be booked under a new sub-head 'Departmental Canteens' below minor head 'Staff Expenditure' under the major head of Accounts to which the revenue expenditure of the related department of Ministry of ~~Personnel~~ is ordinarily debited, and exhibited in the detailed demand for grants. This expenditure has to be absorbed from within the ceiling of non-plan expenditure approved by the Ministry of Finance. In this regard a copy of Ministry of Finance (Budget Division) O.M. No.E-II/B (CDN)/92 dated 24.1.92 was also enclosed. This was issued with the concurrence of the Ministry of Finance (Budget Division) vide their letter No. F-II(26)-B/CDN/92 dated 28.1.92, Ministry of Home Affairs under their No.S-8/92/Fin.I dated 29.1.92 in consultation with the Department of Legal Affairs, Ministry of Law and Justice vide their letter No.5673/91 of 18.12.91. All the Ministries were requested to implement with <sup>immediate effect</sup> ~~minimum effect~~ the instructions of Ministry of Finance (Budget Division) in order to avoid contempt proceedings. A further circular No.F-14(22)/91-Fin.(B) from the Government of National Capital Territory of Delhi, Finance (Budget) Department was also issued in this connection. The classification of government employees as per CCS (CCA) Rules was also ordered to be made and the age of superannuation in respect of Departmental Canteen employees was decided to be fixed in accordance with provision FR-56. The employees were to be retired on their superannuation on attaining 58 years of age as in case of ~~CCS (CCA) Rules~~ <sup>Central Government employees</sup>.



.....7....



12. In accordance with Government of India Order No. 1 below Rule 6-A of CCS(CCA) Rules 1965 the posts carrying the maximum pay-scale of Rs.1150/- but less than Rs.2900/- were classified as Group 'C' (Class III) posts and as such they were to retire on attaining of 58 years of age. Further a circular was proposed to be issued in regard to Group 'D' (class IV) employees about their retirement age as 60 years.

13. In the light of the Supreme Court judgment dated 1.10.91 all the employees working in the Departmental Canteens have to be classified as holders of civil posts in Government of India and parity in pay-scales comparable with Government employees has been given effect to. They will be entitled to all the perks and privileges and would be governed by the same terms and conditions of service as a holder of civil post in Govt. of India. As already stated above, the classification has already been done and the age of retirement has also been fixed on par with the Central Government employees. The Hon'ble Supreme Court has allowed them all the benefits and privileges as is admissible to Central Govt. employees w.e.f. 1.10.91 in addition to what has been allowed in their interim order passed in 1983. It would be going against the orders and spirit of judgment of the Hon'ble Supreme Court if we do not treat them as members governed by CCS(CCA) Rules, 1965, since the applicant is borne on the cadre of National Capital Territory of Delhi which is administered by the Ministry of Home Affairs.

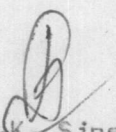
14. Much water has flown in the Ganges after the Director, Canteen, Ministry of Personnel and A.R. issued the relevant circular regulating the terms and conditions of the employees of Canteens/ Tiffin Rooms and their discipline and appeal rules under GSR-54. The spirit of the judgement of the Hon'ble Supreme Court that all the terms and conditions of Central Government civil employees would be ~~admissible~~ <sup>applicable</sup> to them would by implication mean that they would be

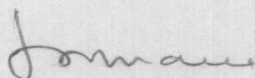
B

17

holders of civil posts under the Government of India and they will draw their pay and allowances from the Non Plan Revenue Heads (i.e. Consolidated Fund) as admissible to Central Govt. employees in their respective Departments/Ministries, and as such they would also be subject to CCS(CCA) Rules, 1965. Thus they are all Central Government employees and for misconduct and misdemeanour they will be subject to Rule 14 of CCS(CCA) Rules 1965. Accordingly the charge-sheet has rightly been drawn under Rule 14 of CCS(CCA) Rules, 1965.

The application is dismissed as devoid of any merit or substance. Costs on parties.

  
( B.K. Singh )  
Member (A)

  
( J.P. Sharma )  
Member (J)

v p c  
18.10.93