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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 16th day of February, 2000

Original Application No. 456 of 1998

District : Kanpur

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

1. Bhaiyya Lal Tiwari,
S/o Sri Nand Gopal Tiwari,
Cook, Staff Canteen,
Accounts Office, Ordnance Equipment Factory,
Kanpur.
2. Devi Charan Yadav,
S/o Sri Bholanath Yadav,
Cleaner,
Staff Canteen, Accounts Office,
Ordnance Equipment Factory,
Kanpur.

(Sri S.C. Mandhya, Advocate)

..... Applicant

Versus

1. Union of India,
Through Ministry of Defence,
Government of India, New Delhi.
2. Director Canteens, Govt. of India,
Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel and Training,
Lok Nayak Bhavan, New Delhi.
3. Chief Controller of Accounts (Fys),
10-A, Auckland Road,
Calcutta-1,
4. C.D.A. Kanpur, Fordnance Factory,
Kanpur.
5. Senior Accounts Officer,
Accounts Office,
Ordnance Equipment Factory,
Kanpur.
6. Chairman, Staff Canteen, Accounts Office,
Ordnance Equipment Factory, Kanpur.

(Sri D.S. Shukla, Advocate)

..... Respondents

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O R D E R

By Hon'ble Mr. Rafiquddin, J.M.

By means of this OA, the applicants have sought directions issued to the respondents to regularise their services in the Office of the Staff Canteen (Accounts Office), Ordnance Equipment Factory, Kanpur with all consequential benefits and also to pay arrears of their salary with interest. The applicants have further sought the relief of commanding the respondents not to run the canteen on contract basis and allow them to continue as Cook and Cleaner.

2. Brief facts of the case are that the applicant nos. 1 and 2 were appointed as Cook and Cleaner respectively on 12-2-1990 in the Staff Canteen, Accounts Office of Ordnance Equipment Factory, Kanpur (Staff Canteen in short). The case of the applicants is that the Staff Canteen is being managed by the members of the staff of the Accounts Office and funds have been provided by the Government. The profit and loss accounts of the Canteen are regularly maintained.

3. The applicant no.1 was given appointment by the respondents from time to time as casual worker in the Office of the Deputy Controller of Defence Accounts, Ordnance Equipment Factory, Kanpur, in the year, 1982. However, after establishment of the Staff Canteen, the applicant no.1 was absorbed in the Staff Canteen. The applicant no.2 was employed as Cleaner in the year 1990 and since then both the applicants are working continuously as such. The applicants moved representations in the month of July, 1994 to the Dy.C.F.A. (Accounts Office, DEFY Kanpur, for regularisation of their services on

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the ground that they were employees of the Staff Canteen. The applicants also sent several reminders but no action has been taken by the respondents. The Chairman of the Staff Canteen has threatened them to dispense with their services and run the Canteen on contract basis. The applicants even after having served regularly for 8 years, their services have not been regularised in terms of O.M. dated 29-1-1992, 16-11-1992, 10-12-1993 and 10-5-1996 issued by the respondent no.2 for regularisation of the services of the staff working in the Staff Canteen. The respondents instead of giving the applicants the benefits of the aforesaid regularisation, they are being threatened to be thrown out of employment by running the Canteen on private basis. Hence this OA has been filed.

4. According to the respondents, applicant no.1 was engaged as casual labour amongst the persons sponsored by the Employment Exchange in 1990 during summer season. His employment was purely on temporary basis for 89 days only and he was terminated from his service on 17-8-1990. Similarly, the applicant no.2 was also engaged as casual labour in the year, 1989 and subsequently in 1992 purely on temporary basis. It has been specifically denied by the respondents that the applicant no.1 and the applicant no.2 were appointed as Cook and helper respectively in the Office Canteen.

5. The respondents have also stated that after termination of the services of the applicant, they were permitted on their own request to run the Office Canteen. They were not paid any salary by the respondents. After March, 1992 the Canteen Committee had become

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defunct as a result the applicants are themselves after purchasing raw materials from the open market are running the same and selling tea and food stuff etc. to the Staff of Accounts Office as well as the Factory and earning their livelihood. The Canteen in question is neither registered with the Director Canteen, New Delhi nor the applicants were employed as Canteen Staff under the Rules governing the recruitment of Canteen Staff and as such the applicants are not the Central Government Employees and consequently this Tribunal has no jurisdiction in the dispute.

6. We have heard learned counsel for both the parties and perused the record carefully.

7. The Apex Court has considered and laid down certain propositions regarding status and regularisation of the services of the employees of the Staff Canteen in the case of "Parimal Chandra Raha and Others vs. Life Insurance Corporation of India and Others, reported in (1995) 2 UPLBEC 846." The Hon'ble Supreme Court has laid down the following important principles:-

- (i) Where, as under the provisions of the Factories Act, it is statutorily obligatory on the ~~on~~ the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.
- (ii) Where although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen the canteen becomes a part of establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from, the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

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(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become the part of the service conditions of the employees. Whether the provisions for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen service has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(v) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

8. Besides, in the case of "M.M.R. Khan and Ors and UOI & Ors reported in 1990(61) FLR 271, it has also been held that canteen workers of a non-statutory, non-recognised canteen of the Railways are not Railway Employees and such employees are not entitled to claim status of Railway servants. The Apex Court has also classified various canteens set up in the Government establishments/offices etc. into three categories; namely;

- (i) Statutory canteens.
- (ii) Non-statutory ~~non~~recognised canteens; and
- (iii) Non-statutory, none recognised canteens.

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9. The statutory canteens are those canteens which are required to be provided compulsorily in accordance with the provisions of Section 46 of the Factories Act. The Apex Court has expressed the view that the employees of such canteens are entitled to the status of Railway employees. In the present case the canteen in question is not covered by the provisions of Section 46 of the Factories Act because the same is not established in the Factory but is attached to the Accounts Office of the respondents, the direction issued by the Apex Court in respect of such canteens are not applicable in the present case.

10. The non-statutory recognised canteens are those canteens which are established as a measure of staff welfare or staff on cooperation basis. The Apex Court has held that the case of the employees of such canteens should be treated at par with that of the employees in the statutory canteens and they should also be treated for all purposes Railway Servants. As regards non-statutory non-recognised canteens are concerned, the Apex Court has clearly held that the workers engaged in these canteens are not entitled to claim the status of Railway Servants.

11. The Apex Court has also referred to the instructions contained in administrative instructions of departmental canteens in office of industrial establishments of the Government issued by the Department of Personnel and Training Ministry of Personnel, Public Grievances and Pensions, Government of India. These instructions have been summarised as follows :-

- (a) Canteens/Tiffin Rooms set up on departmental basis and run as per scheme issued by the Department of Personnel and Training;
- (b) Canteens/Tiffin Rooms set up on Co-operative basis by a Society of Government employees with the Head of the Department/Office/Establishment or his nominee as Chairman; and

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(c) Canteens/Tiffin Rooms set up in Industrial Establishments (other than those covered under Section 46 of the Factories Act) of the Govt. and which have not been exempted from following the rules in the said Instructions due to the availability of a separate and distinct set of rules and guidelines framed by the controlling Ministries/Departments. (

12. It is made clear in these instructions that the orders issued under the said Instruction are applicable to all Canteens/Tiffin Rooms functioning to be set up in any Ministry, Department, Establishment, Office, Installation of the Government of India (industrial) which should be centrally registered with the office of the Director of Canteens, Departmental of Personnel and Training, New Delhi including those functioning under the Ministries of Defence. P & T and Railways, unless these three Ministries had previously decided to exempt any of their Canteens/Tiffin Rooms from the purview of the said Instructions due to specific reasons, and they had framed or they propose to frame a separate set of instructions for the exempted canteens. The Instructions further stated that the policy matters and co-ordination on canteen matters will be centrally done by the Department of Personnel and Training (Director of Canteens). To be entitled to subsidy all the departmental canteens have to get themselves registered centrally with the Director of Canteens and Training. The canteens are entitled to subsidy on wages and gratuity payable to the capital and replacement grants for equipment including utensils, crockeries, cutlery and furniture and also to interest-free loans. In addition to subsidy for equipment, the canteens are also entitled to other facilities such as accommodation on nominal rent of Re.1.00 electricity, water, etc., The Instructions in terms state that since the canteens are run departmentally as a measure of staff welfare, the beverages, snacks and meals, etc. have to be made available

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to the staff at economic rates and for this purpose the Government has to provide necessary accommodation at the nominal rent and provide the necessary grants, subsidy and loans. In addition, the concerned Department/Office has to bear the electricity and water bills. In Chapter V which deals with the personnel in the canteens, the Instructions lay down the entitlement of Canteens/Tiffin Rooms to the number of categories of employees according to the grades of Canteens/Tiffin Rooms. With regard to the recruitment rules, conditions of service, Status and the scales of pay of the canteen workers, the procedure for taking of disciplinary action against them as well as for giving training to them, the chapter makes it clear that since the canteen workers have acquired the status of the holders of civil posts w.e.f. October 1, 1979, their recruitment and conditions of service, etc., would be governed by the rules framed under proviso to Article 309 of the Constitution contained in G.S.R. 54 issued under Government of India, Department of Personnel and Training Notification dated December 23, 1980. It is made clear that the said rules also apply to the employees of the Canteens run by the Co-operative Societies in conjunction with the bye-laws of the Society and local co-operative laws in force. It is further made clear that the workers in the non-statutory departmental and co-operative canteens/Tiffin Rooms will be paid the pay and allowances at the same rate and on the same basis w.e.f. September, 26, 1983 on which the employees of the statutory canteens are paid the same.

13. The chapter also mentions that before taking any disciplinary action against any canteen worker procedure as set out in Chapter IV (Conduct and Discipline) of G.S.R.

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of 1954 dated December 23, 1980 published in the Gazette of India, Part II Section 3, sub-section (1) dated January 17, 1981 will be followed. The chapter further directs periodical training programmes to be arranged by the Director of Canteens for managerial personnel and other canteen staff.

14. Chapter VI contains guidelines for constituting the Managing Committees of the canteens. This chapter ordains that the Chairman of the managing committee should preferably be the Head of the Department/Office himself or his Deputy, and that the Honorary Secretary of the managing committee should normally be the Welfare Officer of the Administrative Officer of the Department/Office of the minimum rank of a Section Officer or a Major or equivalent in services, who shall be nominated by the Office/Establishment, and in the case of Co-operative Canteens may be elected as per the bye-laws of the Society. One of the officials who should be of the rank of Section Officer/Major or above is to be nominated on the Managing Committee by the Chairman. Paragraph 6.11 defines the Legal Status of the Managing Committee. It says that the Committee functions in the Department/Office/Establishment of the Government of India for the welfare of the Govt. employees under the orders of the Government of India and its functions are connected with the affairs of the Union. The Committee, therefore, does not enjoy an autonomous status. With respect to the contractual obligations, it functions "for and on behalf of the President of India". The proceedings of the Committee will not be conducted or decided on resolutions or voting system, but the official decision will rest with the Chairman of the Managing Committee or the Head of the Department/Office. In the case of Canteens run by the co-operative societies, this provision is to apply as per the bye-laws of the society

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and the co-operative law in force. The pressure of the Chairman and the Hon. Secretary is necessary to constitute the quorum for holding the meeting of the Managing Committee. The Head of the Department/Office is given power to depute a Government servant of the rank of Section Officer/ equivalent or below if he can be spared, for part time or whole time assistance to the Managing Committee. The Head Department/Office/concerned is required to provide stationery, stencils, cyclostyling facilities, postage stamps, office assistance etc., to enable the Managing Committee to conduct its business.

15. The annual accounts of the Canteens have to be submitted to the Financial Advisers of the Department/ Office concerned with copies thereof to the Director of the canteens, and the audit of the accounts of the Canteens/ Tiffin Rooms is to be carried out by the Departmentalised Accounts Organisations of the concerned Ministries/Depts/ Offices. Out of the surplus of net profits of the canteens, 1/3 amount is required to be remitted to the Director of Canteen Funds for welfare of the canteen employees in general.

16. All the aforesaid provisions apply to all types of Tiffin Rooms classified into Type B and A where the strength of the Department/Office is between 25-49 and 50-59 respectively and to the Canteens classified in Types D, C, B and A where the strength is between 10-2490, 250-499, 500-699 and 700-1200 respectively. Where the strength is above 1200 further higher classification is given to the Canteens.

17. These provisions contained in the Instructions, show that the Government has a complete control over the canteens and the workers employed therein are holders of

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civil posts within the meaning of Article 311 of the Constitution. Their recruitment and service conditions are governed by the rules applicable to the employees of the Government Department/Office/Establishment to which the canteens are attached."

18. In the light of the aforesaid instructions the circular dated 10-3-1989 (Annexure- CA-3) has been issued by the Chief Controller of Accounts (Fys), Calcutta in which the instructions for setting up of new Departmental Canteens/Tiffin Rooms in the organisation of Chief Controller of Accounts (Fys) have been issued, which are reproduced below :-

"Sub: Setting up of New Deptt Canteens/Tiffin rooms in the Organisation of C C of A(Fys)

* * *

Setting up of Deptt. Canteen/Tiffin rooms are felt necessary where such facilities are not easily available. A Deptt Canteen may be set up inside the office premises to meet refreshment needs of the employees as a welfare measure to prepare under hygienic conditions and sell items of tea, coffee, snacks, lunch etc. as per the local requirement, teste of the beneficiaries at reasonable rates at 'No Profit, No loss basis'.

2. For setting up a Deptt Canteen, a proposal in prescribed proform(specimen copy attached) with a no objection certificate from the C.F. Management, will be required to be submitted to this office for according sanction of C C of A (with the prior approval of CCDA) in regard to the provision of fund for loan, grants, subsidy etc. as provided in the 'Green Book'.

3(i) After setting up of the Canteen/Tiffin rooms these will get themselves registered centrally with the Director of Canteens, New Delhi, and yearly subscriptions are to be remitted to him in advance.

(ii) Managing Committee as per guidelines given in the 'Green Book' will be constituted out of the Officers/Staff of the office.

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4.(i) Initial grant and interest free loan at the rate prescribed in the 'Green Book' will be sanctioned by this office for bulk purchase of materials after the provision of fund is made available.

(ii) Subsidy 70% and 100% to the Staff of Canteen and Tiffin Room respectively will be paid from Govt. fund and remaining 30% will be paid out of Canteen funds.

(iii) Subsidy 70% is payable to the canteen employees engaged on ad hoc/temporary/leave vacancy basis on created/sanctioned posts.

5. As regards recruitment of Canteen staff, normal canteen recruitment rules will be followed as the employees of the Deptt. Canteen, and Tiffin rooms have been declared as holder of Civil posts. Due to 'Ban on recruitment' and Budgetary Constraints and austerity measures, appointment of canteen/Tiffin room employees and also filling up of vacancies is not possible at present. In the meantime, however, if the Canteen/Tiffin rooms can manage to run without employing additional man power for the purpose of preparation/distribution of tea, coffee, food etc. and other jobs, C C of A may consider according requisite approval after making provision of fund for the purpose.

6. It is, therefore, requested that, while forwarding the proposal for setting up of new canteens/Tiffin rooms, the clarifications stated in the above paras may please be kept in view in consultation with the provisions laid down in the 'Green Book'."

19. Now in the light of the above provisions it is to be seen whether there is any canteen established by the respondents inside the office of the respondent no.5 and the applicants are employed therein. If it is established that there is a Staff Canteen which has been established as per the instructions cited above and the applicants are employed in such canteens then the applicants have the case for regularisation. The specific case of the respondents is that there is no staff canteen as claimed by the applicants and the applicants were merely engaged as casual labours from amongst the persons sponsored

by the Employment Exchange in the year, 1990 for the summer season. The service of the applicant no.1 was terminated on 17-8-1990 after he was engaged for 89 days only whereas the applicant no.2 was engaged as casual labour in the year, 1989 and subsequently in the year, 1992 purely on temporary basis. In support of their case the respondents have filed copies of termination order of the applicants which are SCA-2 in which the applicants have been shown to have been appointed as Khas-Khas Majdoor and Canteen Labour for the period mentioned above.

20. The respondents have denied having paid their salary from the Office of the Respondent No.5. The applicants have not filed any documents to prove that they were being paid salary by the respondent no.5 after the alleged termination order. They have, however, filed certificates issued by Sri S.C. Porwal, A.A.O. Ord.Equip.Factory, Kanpur (Annexures-3 & 4) in which it has been certified that the applicants are servicing in the Office of Staff Canteen u.e.f. 2-1-1991 til date of issue of this certificates i.e. 27-10-1997. The applicants have also made reliance on the temporary Identity Card issued by the A.A.O. by the respondent no.5 to the applicant no.1, issued on 24-12-1996 (Annexure-5). The letter head (Annexure-6) of Staff Canteen has also been filed to prove that the Staff Canteen exists. The applicants have also claimed that a sum of Rs.10,000/- was sanctioned for running the staff canteen in the year, 1990. It is also claimed that the funds for starting Staff Canteen were provided by the Government and copy of profit and loss accounts was regularly maintained. A copy of the profit and loss account sheet for the period 1-4-1990 to 31-4-1990 has also been annexed as Annexure-1 to this

DA. However, the respondents have denied these claims and it has been contended that the total strength of the Office of Respondent No.5 in February 1990 was 152 and not 200. It is admitted that some financial assistance was sought from the Chief Controller of Accounts (Fys) and not from the Government of India for running Tiffin Room/Departmental Canteen as a welfare measure, and only a sum of Rs.9,000/- was sanctioned by respondent no.4. However, no appointment for the Canteen was made at any stage. Further the respondents claim that the Canteen was being managed earlier by the Canteen Committee, but the Committee lost control of the Canteen after March, 1992. The Canteen activities were continued to be made by Staff for their Tea and snacks requirements and the applicants merely served in their private capacity to earn their livelihood which does not confer any right or entitlement to the applicants. As regards the certificate issued to the applicants by one Sri S.C. Porwal, it has been clarified on behalf of the respondents that the aforesaid certificates were issued by Sri S.C. Porwalthree days before his retirement perhaps with some ulterior motive because he was neither A.A.O. 'G' Section of the Office nor he was posted in the concerned Section. He was not authorised to issue such certificates. He was also not Member of the Canteen Committee. Similarly, the issuance of the temporary Identity Card to the applicant no.1 by one Sri Gupta, A.A.O. by the respondent no.5, the respondents explained that the same was issued in good faith on the request of the applicant and the same was not issued by the Officer Incharge. The explanation Sri KC Gupta has also been enclosed as Annexure-6 in which he has regretted for having issued such a certificate unintentionally. Under these circumstances, it has

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been established on behalf of the respondents that there does not exist any Canteen after March, 1992 and the applicants are not regularly appointed employees of the Canteen. The Canteen in question is neither registered with the Director of the Canteens nor it was approved by the Management. In other words, the Office Canteen was not established as per instructions issued by the Department of Personnel & Training or by the Chief Controller of Accounts(Fys) and the Canteen became defunct after March, 1992.

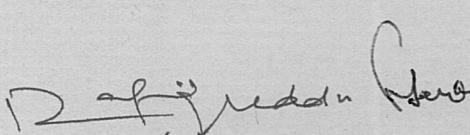
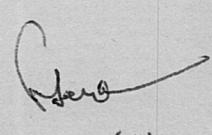
21. It has not been claimed on behalf of the applicants that the Canteen in question was established as per the instructions contained by the Ministry of Personnel and Training as well as by the Chief Controller of Accounts (Fys), which have been referred to above. As regards the sanction of amount of Rs.10,000/- to set up the Canteen, the same was not sanctioned by the Govt. of India but by the Chief Controller of Accounts(Fys). There is no evidence available on record to establish that any Staff Canteen was established as per instructions. It has also not been established that the applicants were receiving salary as employees of the Canteen. It appears that the applicants were engaged as casual labours in the year, 1992, and their services were utilised in the existing Canteen as casual labours. It does not satisfactorily establish that after termination of their services in the year 1990 they were engaged in any statutory Canteens. On the other hand it appears that the Staff Canteen did not function after March, 1992 as claimed by the respondents. Even the Staff Canteen which was being run in the Office of respondent no.5, was not established in terms of the instructions issued by the Ministry of Personnel and Training and Chief Controller

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of Accounts (Fys).

122. The applicants appear to have been engaged in the Canteen non-statutory non-recognised and as such they are not entitled to claim the status of Central Government employees as claimed by them.

123. In view of the above findings, the applicants are not entitled for any relief claimed by them and the DA is liable to be dismissed. Accordingly, the DA is dismissed with no order as to costs.


Member (J) 
Member (A)

Dube/