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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.319 OF 1994

Cuttack, this the 4th day of December, 1998

Naresh Kumar Das and another Applicants

Vrs.

Telecom District Engineer and others.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

→
(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
4.12.98
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.319 OF 1994

Cuttack, this the 4th day of December, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
 AND
 HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL).

.....

1. Naresh Kumar Das,
 s/o late Nityananda Das
 at present working as
 Assistant Manager
 2. Haladhar Samal,
 son of late Krushna Chandra Samal,
 at present working as Wash Boy
 Both are working at Departmental Canteen
 of Telephone Bhawan,
 Bajrakabati Road, Cuttack,
 Town/Dist.Cuttack
- Applicants

By the Advocates - M/s K.C.Kanungo, B.Rout &
 S.Behera.

Vrs.

1. Telecom District Manager,
 Telecom Division, Cuttack,
 15, Cantonment Road, Town/Dist.Cuttack.
 2. Director of Canteens,
 Lok Nayak Bhawan,
 "D" Wings, Room No.362,
 Khan Market,
 New Delhi.
 3. Secretary,
 Departmental Canteen,
 At-Telephone Bhawan,
 Bajrakabati Road,
 Town/Dist.Cuttack.
 4. Manager, Departmental Canteen,
 Telephone Bhawan,
 At-Bajrakabati Road,
 Town/Dist.Cuttack.
 5. Sridhar Mohapatra,
 Ex-Secretary, Departmental Canteen,
 at present Telecome Operation Supervisor,
 Telephone Bhawan,
 Bajrakabati Road,
 Town/Dist..Cuttack.
- S. J. M.*

6. Basudev Nayak,
Ex-Secretary, Departmental Canteen,
at present Telecom Operation Supervisor,
Telephone Bhawan,
Bajrakabati Road,
Town/Dist.Cuttack.
7. Jagannath Das,
Ex-Secretary, Departmental Canteen,
at present Telecom Operation Supervisor,
Telephone Bhawan,
Town/Dist.Cuttack.
8. Chief General Manager,
Telecommunication,Orissa,
P&T Complex,Bhubaneswar,
At/PO-Bhubaneswar,Dist.Khurda.....Respondents.

By the Advocate - Mr.Ashok Mohanty,
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the two petitioners who have been permitted to pursue the application jointly, have prayed for a direction to the respondents to reinstate them in service and to confer temporary status on them and also for a direction to the respondents to absorb the petitioners on regular basis as Assistant Manager and Wash Boy respectively against the vacant posts and not to disengage the petitioners from service or alter their service conditions till their regular absorption.

2. Facts of this case, according to the applicants, are that they were working as Assistant Manager and Wash Boy respectively for years together on casual basis in the Telecom Canteen, Telephone Bhawan, Cuttack. They had earlier moved the Tribunal in OA No. 90/94 seeking direction to the respondents to confer temporary status on the applicants and to regularise their services. The Tribunal in their order dated 4.3.1994 at Annexure-1 disposed of the application directing the applicants to file fresh

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representations setting forth their grievances within seven days before respondent no.1, and also directed respondent no.1 to dispose of the representation after due scrutiny through a speaking order within 15 days from the date of receipt of the representation. It was also ordered that until the applicants' case is finally disposed of, their services should not be dispensed with. The applicants were also given liberty to agitate their grievances afresh, if they feel aggrieved by the orders to be passed on the representation by respondent no.1 to the earlier O.A. Accordingly, Telecom District Manager (respondent no.1) in his orders dated 31.3.1994 at Annexures 2 and 3 rejected the representations of the two applicants on the main ground that the applicants were never the employees of the Co-operative Canteen or the Departmental Canteen, and because of this they are not entitled to any benefit claimed by them in their representations. The applicants have further stated that the orders at Annexures 2 and 3 have been passed with mala fide intention in order to harass and victimise the applicants. Their case is that applicant no.1 was duly appointed as Assistant Manager in pursuance of the resolution dated 28.2.1984 passed in the General Body meeting of that date. Copy of this resolution is at Annexure-4. In accordance with the above resolution, Sridhar Mohapatra, ex-Secretary, Departmental Canteen, at present Telecom Operation Supervisor (respondent no.5) gave appointment to applicant no.1 as casual Assistant Manager with the pay of Rs.150/- per month in order dated 1.3.1984 (Annexure-5). Applicant no.1 has also been issued with different certificates by successive Secretaries of Telecom Co-operative Canteen, Telephone Bhawan, Cuttack, where he was working as Assistant Manager.

Copies of certificates dated 4.8.1986, 2.8.1990 and 31.5.1993 are at Annexure 6 series. It is stated that the then Secretary of Co-operative Canteen in his letter dated 26.9.1992 (Annexure-7) intimated respondent no.1 that applicant no.1 has been working as Casual Assistant Manager. As regards applicant no.2 it is stated that he was appointed as a Casual Wash Boy by the competent appointing authority of the Canteen and he has been working since January 1989 till the date of termination of his service. These facts are apparent from letter dated 26.9.1992 (Annexure-8).

3. It is further submitted that from the audit report of Telecom Co-operative Canteen for the year 1988-89 the relevant extract of which is at Annexure-9 it appears that applicant no.1 has been working in the Canteen as Casual Assistant Manager. It also appears that such casual staff have been paid wages and such payment is noted in the receipt and expenditure statement of the Canteen for the period from 1.7.1988 to 30.6.1989. Besides, some of the payment receipts through which the applicants were paid wages have been annexed at Annexures 10 and 11 series. The applicants have stated that all the above including the documents annexed show that the applicants have been working in the Telecom Co-operative Canteen from their initial date of appointment as Casual Assistant Manager and Casual Wash Boy. In view of this, the assertion of respondent no.1 in Annexures 2 and 3 that they have never worked in the Co-operative Canteen is palpably incorrect. It is further stated that the Department of Personnel & Administrative Reforms have issued a compilation of administrative instructions on departmental canteens in the office of industrial establishments in Government. This compilation is known as Green Book. According to the Green Book, the affairs of the canteen are

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to be managed by the Managing Committee headed by departmental head or its nominee. There would be an honorary Secretary who would be at least of the rank of a Section Officer. As per Schedule "C" under Rules 7 and 19 of notification dated 23.12.1980 the Manager in "C" Type Canteen is the appointing authority for Wash Boy like applicant no.2 and the Secretary is the appointing authority for Assistant Manager. It is further stated that Telecom Co-operative Canteen has been functioning as a Co-operative Canteen from 10.4.1981 and has been registered with the Directorate of Canteens, New Delhi, as a "C" Type Canteen. Following the decision of the Hon'ble Supreme Court in the case of **Chandrakanta Jha and others and P.N.Sharma and others vrs. Union of India and others**, this Canteen has been converted into a departmental canteen with effect from 1.10.1991. But even though the Hon'ble Supreme Court in the aforesaid decision have given direction to treat the employees of non-statutory canteen to be employees of Central Government and this has been emphasised in the order dated 3.9.1993 of the Department of Personnel at Annexure-12, the applicants have not been treated as regular Central Government employees. Department of Personnel in their order dated 10.9.1993 at Annexure-13 directed granting of temporary status to casual employees who are presently employed and have rendered one year of continuous service meaning engagement for a period of at least 240 days. The applicants have further stated that service of one S.C.Behera, a casual worker in the Co-operative Canteen at Bhubaneswar has been regularised by Chief General Manater, Telecommunication, Bhubaneswar. The applicants' cases are similar to Shri S.C.Behera. But in the orders at Annexures 2 and 3, the case

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Shri S.C.Behera has been wrongly distinguished even though the applicants are similarly situated and are entitled to the same treatment. Lastly, it has been stated that the applicants have been thrown out of engagement and in their places fresh outsiders have been taken as casual employees in the respective posts the applicants were holding. In view of the above, the applicants have come up with the prayers referred to earlier.

4. The respondents in their counter have submitted that the order of engagement of applicant no.1 as Assistant Manager on casual basis in Telecom Co-operative Canteen, Telephone Bhawan, Cuttack, on a consolidated wage of Rs.150/- was not issued by any officer of the Department and there is no liability on the Department for any letter of appointment issued in any manner by the Secretary of Co-operative Canteen who was not authorised to do so on behalf of the Department. The statement of the applicants that their engagement as Assistant Manager and Wash was made pursuant to the resolution passed in the General Body meeting held on 24.11.1983 and Board of Directors meeting held on 1.3.1984 has been denied by the respondents in their counter. It is stated that in the resolution there was no direction regarding the engagement of the applicants as Assistant Manager and Wash Boy. It is also stated that there was no meeting of Board of Directors on 1.3.1984. The respondents have also contested the contention of the applicants that they are working continuously without any interruption till date. It is stated that the management of Co-operative Canteen was made over from co-operative management to the Department of Telecommunication on 1.6.1993 and the staff of the erstwhile Co-operative Canteen came under direct management of the Department. The staff were taken over as

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per the list made over by the then Secretary of the Canteen. The Department of Telecommunication have never appointed or engaged the applicants in any capacity. In support of their contention, the respondents have filed a copy of the Acquittance Roll of the Canteen for the immediately preceding month May 1993 at Annexure-R-1 and this does not contain the names of the applicants. It is also stated that none of the Salary Registers maintained in the erstwhile Co-operative Canteen contains the names of the applicants showing that they worked in the Canteen upto 1.6.1993. It is further stated that the applicants were never employees borne in the regular establishment of the Telecom Co-operative Canteen. This has been verified from the Salary Registers maintained from the beginning of the Telecom Co-operative Canteen ~~thexxxxxxxxx~~ upto 1.6.1993, i.e., the date of taking over of the Canteen by the Department of Telecommunication. The respondents have stated that the Co-operative Canteen employees, who have been taken over by the Department on the Department taking over the Canteen, have become the employees of the Central Government with effect from 1.10.1991. The circular dated 3.9.1993 at Annexure-12 to the OA has no application to the present petitioners. It is further stated that the Co-operative Canteen was functioning under the control of the Managing Committee and Board of Directors and in pursuance of the Bye-laws of the Society. Excess casual staff, if any, engaged by the Co-operative Canteen does not come in the list of employees of Co-operative Canteen as was made over to the Department of Telecommunication on 1.6.1993. It is also stated that the orders passed by the Telecom District Manager at Annexures 2 and 3 are reasoned orders and are not liable to be set aside, as prayed for. It is also submitted that the present application is not maintainable as the applicants are not casual labourers nor employees under

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the Telecom Department. On the point of granting of temporary status to the applicants, it is stated that they do not come under within the ambit of the temporary status scheme framed on 7.11.1989. This scheme has been enclosed at Annexure-R.2 and covers casual labourers working in the Telecom Department engaged prior to 1.4.1985 and who have completed 240 days in any succeeding year and are currently continuing in their casual engagement as such. It is stated that the applicants were not working under the Department of Telecommunication. With effect from 30.3.1985 engagement of anycasual mazdoor has been banned. Only casual labourers engaged prior to 1.4.1985 coming under the scheme at Annexure-R.2 are entitled to be conferred temporary status and this does not apply to the present petitioners. It is further stated that applicant no.1 was engaged by the then Secretary of Co-operative Canteen on need basis but not daily on a consolidated amount of Rs.150/- per month vide Annexure-4. The decision of the Hon'ble Supreme Court is applicable to the staff on pay roll of Departmental Canteen/Co-operative Canteen appointed against approved vacancies. In the instant case, only six posts were sanctioned and six persons consisting of Manager, Cook, two Bearers, a Wash Boy and Tea Maker were approved as staff and those six persons alone are entitled for regularisation and other benefits, but not the applicants. The respondents have further stated that the letter purportedly issued by Secretary, Telecom Co-operative Canteen at Annexure-7 is incongruous because this letter has been addressed to Telecom District Manager on 26.9.1992 but it has been signed on 26.4.1992. It is also stated that Annexure-8 is nothing but a recommendatory letter and does not give any right to the applicants. As regards audit report, it is stated that the audit report at Annexure-9 merely indicates the engagement of applicant no.1 as Casual Assistant Manager

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 but does not say that applicant no.1 was engaged against any approved vacancy. Payment of wages through ACG 17 forms enclosed at Annexures 10 and 11 is also questioned by the respondents and it is stated that these were not passed by any authority of the Department. As regards regularisation of service of one S.C.Behera in the Canteen of Circle Office, Bhubaneswar, it is stated that the Canteen of Circle Office was a different unit and that case cannot go to support the case of the applicants in this O.A. It is further stated that the instructions in the Green Book and the decision of the Hon'ble Supreme Court are applicable only to the staff who are on the roll of the Canteen and who have been duly engaged by the competent authority against sanctioned vacancies. Any casual engagement made in excess of the sanctioned strength and without any authority of the Department is ab initio void and such staff are not entitled to the benefit of Green Book and the decision of the Hon'ble Supreme Court. On the above grounds, the respondents have opposed the prayers of the applicants.

5. We have heard Shri K.C.Kanungo, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents and have also perused the records. The learned counsel for the petitioners has submitted a written note of argument along with a circular dated 22.6.1998 of the Department of Personnel & Training which has also been taken note of. Before going into the different reliefss claimed by the petitioners in this Application, the factual aspects of the matter will have to be referred to.

J.J.M. 6. According to the applicants, they were engaged admittedly on casual basis as Assistant Manager on a consolidated salary of Rs.150/- per month and as Wash Boy in

the Telecom Co-operative Canteen. It is also the case of the applicants that they were paid from the contingencies. The respondents, on the other hand, have stated that in the Co-operative Canteen, these two applicants were not included as regular staff. They were not paid regular salary through the Salary Register. The respondents have also denied that because of decision of the General Body meeting and Board of Directors, the applicants were engaged. It is also stated by the respondents that the applicants were not working against any regular vacancies of sanctioned posts. It is further stated by the respondents that the Co-operative Canteen along with staff on its roll were taken over by the Department on 1.6.1993. At that time the management of the Co-operative Canteen did not indicate the names of the applicants as employees on the rolls of the Co-operative Canteen. From the perusal of the annexures, it is clear that even prior to taking over of the Co-operative Canteen by the Department, 70% of the wages of the approved staff of the Co-operative Canteen was being paid by the Department by way of subsidy and only such approved staff in respect of whom the Department was earlier paying subsidy to the extent of 70% are only liable to be regularised. It cannot be the position that if the Co-operative Canteen had engaged any staff beyond the approved strength, then with the taking over of the Co-operative Canteen by the Department, such staff will be automatically entitled to regularisation as Central Government employees. In this case, even going by Annexure-4 given by the applicants, it is seen that applicant no.1 was appointed as Casual Assistant Manager and it was clearly written that 100% of his wages will be borne by the co-operative management. From this, it is clear that applicant no.1 was not one of the staff who was regularly

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borne in the establishment of the Co-operative Canteen if at all he was engaged as a casual worker on a consolidated salary out of the canteen funds. It is not the case of the applicants that they were selected through any process of selection or with the approval of the departmental authorities. It is submitted by the learned counsel for the petitioners that from Annexure-7 it would be clear that there are two posts lying vacant and in the post of Cupon Clerk, applicant no.1 can be adjusted. Once the Canteen has been taken over by the Department, if further posts are to be filled up, then such posts are to be filled up in accordance with the Recruitment Rules. Now that after taking over of the Canteen, the canteen staff have become Central Government employees. The departmental instructions or the decision of the Hon'ble Supreme Court do not provide that even casual workers in the Canteen who have been inducted without any process of selection would be taken over as Central Government employees on the taking over of the Canteen by the Department. What is most important in this case is that at the time when the Co-operative Canteen was taken over by the Department on 1.6.1993, the management of the Co-operative Canteen handed over six numbers of staff who were borne in the regular establishment of the Co-operative Canteen as per the list and these six persons were regularised as Central Government employees. The Acquittance Roll of May 1993, the month immediately preceding the taking over makes it clear that the two applicants were not borne in the regular establishment of the Co-operative Canteen, and as such they are not entitled to be regularised as Central Government employees.

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7. It has been submitted by the learned counsel for the petitioners that the head of office used to be the President of the Co-operative Canteen. The Department was also giving subsidy and therefore, the engagement of the applicants cannot be said to be without the knowledge of the Department. The Co-operative Canteen was run as a Co-operative Society and was guided by its Bye-laws and Articles of Association. A co-operative society is a legal entity different from the Department. The fact that the Head of Office was the President of the Co-operative Canteen would not make the Department liable to induct the applicants as regular employees of the Department in case they were engaged as casual workers by the management of the society beyond the sanctioned strength. We have seen that in this case the applicants were engaged as casual workers by the Secretary of the Co-operative Canteen on consolidated salary. The respondents have stated that they might have been engaged on a need basis and not daily basis. The applicants, on the other hand, have asserted that they were working continuously from the date of their initial engagement till their disengagement after the Canteen was taken over. In view of the above facts, their prayer for regularisation as Central Government employees is held to be without any merit and is rejected. As the applicants have already been disengaged, the question of preventing the respondents from disengaging them does not arise.

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8. The other remaining prayer of the applicants is for conferring temporary status. The entitlement for being conferred temporary status will arise only if the applicants were initially engaged as casual workers in the Department of Telecommunication prior to 1.4.1985 and if they have put in 240 days of engagement in a calendar year. In the instant case, from the averments of the applicants themselves it is clear that they were never casual workers under the

Department of Telecommunication and therefore, the question of conferring temporary status on them does not arise. From the vouchers given at Annexures 10 and 11, the authenticity of which has been disputed by the respondents, it appears that the applicants continued on casual basis even after the Canteen was taken over from 1.6.1993. These vouchers are dated 4.8.1993, 31.10.1993, 27.10.1993 and 23.11.1993. From the vouchers themselves, it is seen that these have actually been passed for payment by the Secretary, Telecom Co-operative Canteen. This is unusual because once the Canteen was taken over by the Department on 1.6.1993, the management was taken over by the Department and the stamp of Secretary, Telecom Co-operative Canteen could not have been given in the vouchers in August, October and November 1993. Moreover, even though it is the case of applicant no.1 that he was engaged as Casual Assistant Manager, in the voucher he has been described as Cupon Clerk. It has been submitted by the learned counsel for the petitioners that even after the Canteen was taken over the applicants were on roll upto the end of June 1994. In other words, they have worked in the same capacity even after the Canteen was taken over by the Department from 1.6.1993 for one more year. But the applicants have not produced any document in support of the above contention. It is submitted by the learned counsel for the petitioners that the Co-operative Canteen was taken over on 1.6.1993 with effect from 1.10.1991 and even from 1991 by continuing upto June 1994 they must be held to be entitled for getting regularised either under the Canteen Scheme or under the Departmental Scheme for regularisation of casual workers. We have already held that the applicants did not work as casual workers under the Telecom Department. This

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situation will not undergo any change by the Canteen being taken over from 1.10.1991 and therefore, the applicants are not entitled for being granted temporary status under the Departmental Scheme. From 1991 to 1994 even if it is taken that they have worked on casual basis, their engagement was as contingent workers and not as regular staff of the Co-operative Canteen and therefore, they are not entitled to regularisation as a part of the Scheme of taking over of the Canteen by the Department. In view of the above, we hold that the applicants have not been able to make out a case for any of the reliefs claimed by the petitioners.

9. It is submitted by the learned counsel for the petitioners that under the Co-operative Canteen the applicants were working as contingent workers. For a "C" type canteen the staffing pattern is laid down and according to this, there are still vacancies and when the vacancies are filled up by the departmental authorities, their cases should be taken into consideration. It is also submitted that even though from June 1994 the applicants have been disengaged, other casual staff are being engaged by the departmental authorities to run the Canteen and the cases of the applicants have been ignored. In consideration of the above, we direct that if the respondents fill up any vacant posts in the departmental Canteen and in case the petitioners apply for the said posts, the cases of the applicants should be considered by the respondents strictly in accordance with the Recruitment Rules. In case the applicants are age-barred at that time, then to the extent of their engagement as contingent workers in the Co-operative Canteen, they should be given age relaxation. As regards the other aspect about engagement of other ad hoc casual workers by the Department in the Canteen, after the applicants have been disengaged in June 1994, according to them, it is not possible to issue any

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direction to the respondents to engage them because with the taking over of the Canteen, the entire structure of the management has changed and departmental Canteen is a separate legal entity than the Co-operative Canteen.

10. With the above direction, the Original Application is disposed of but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
4.12.98

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