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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 82 OF 1995

Cuttack, this the 11th day of August, 2000

Shri Pradeep Kumar Nanda and othersApplicants

Vrs.

Central Board of Trustees and othersRespondents

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)
VICE-CHAIRMAN
2000

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CORAM:

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

.....

1. Shri Pradeep Kumar Nanda, aged about 31 years, son of Purna Chandra Nanda of village/post Sunderpada, Bhubaneswar-2, District-Khurda, at present working as Manager-cum-Saleman.
2. Shri Aruna Kumar Panda, aged about 28 years, son of late Nanda Kishore Panda of village/post-Oddiso, PS-Dharmasala, District-Jajpur, at present working as Counter Clerk.
3. Shri Bijay Kumar Sahoo, aged about 32 years, son of Kunjabihari Sahoo of village/post-Mendhasal, PS-Chandaka, District-Khurda, at present working as Halwai.
4. Shri Rabindranath Pradhan, aged about 34 years, son of Sadhu Charan Pradhan, of village/Post-Golabai, PS-Jankia, District-Khurda, at present working as Bearer.
5. Shri Durga Charan Mallik, aged about years, son of Shri Chakradhar Mallik, of village/Post-Badapandusar, PS/District-Nayagarh, at present working as Bearer.
6. Shri Ananda Prasad Sahoo, aged about 31 years, son of late Kanuni Sahoo of village Ramachandrapur, Post-Sukarpada, District-Cuttack, at present as Tea and Coffee Maker.
7. Shri Abhiram Behera, aged about 28 years, son of Shri Hagar Behera of village Sugo, Post Gopaljew Sugo, District-Bhadrak, at present working as Wash-boy.
8. Shri Laxman Pradhan, aged about 35 years, son of Shri Khadi Pradhan of village/post-Dighri, P.S-Bolagarh, District-Khurda, at present working as Wash-boy

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Applicants

(All above are employed in Bhavishyanidhi Departmental Canteen, office of the Regional Provident Fund Commissioner, Janapath, Unit-9, Bhubaneswar-7)

Vrs.

1. Central Board of Trustees, Represented by Central Provident Fund Commissioner, 9th Floor, Mayur Bhawan, Connaught Circus, New Delhi.1.
2. Regional Provident Fund Commissioner, Orissa, Unit-9, Janapath, Bhubaneswar-751 007.
3. Director of Canteen, Department of Personnel & Training, 3rd Floor, Lok Nayak Bhawan, New Delhi.

..... Respondents

Advocate for applicants - M/s K.C.Kanungo
S.S.Mohapatra.

Advocate for respondents - 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 eight applicants, who have been permitted to pursue the application jointly, have prayed for a direction to the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner (respondent nos. 1 and 2) to regularise the services of the applicants.

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2. Facts of this case, according to the applicants, are that in the Departmental Canteen in the office of respondent no.2 the applicants were appointed as Manager-cum-Salesman, Counter Clerk, Halwai, Bearers, Tea and Coffee Maker and Wash Boys on different dates from 26.11.1986 to 11.12.1990. The applicants have stated that according to the Booklet entitled "Administrative Instructions on Departmental Canteen of Government offices and Industrial Establishments", popularly known as Green

Book, respondent no.2 is the Chairman of the Canteen. Assistant Regional Provident Fund Commissioner is the Honorary Secretary according to the provisions of the Green Book. The Chairman, Secretary and some other members constitute a Managing Committee which enjoys legal status and its functions are connected with affairs of Union as has been mentioned in the relevant paragraph of the Green Book the extracts of which are at Annexure-2. Constitution of the Managing Committee in the instant case has been in accordance with the provisions of the Green Book. It is further stated that the Canteen is a "D" Type non-statutory departmental canteen. In case of applicant nos. 1 and 5, appointment letters were issued under the authority of the Honorary Secretary of the Canteen and in respect of other applicants, appointment letters were issued under the authority of the Chairman. It is submitted that service conditions of the applicants, their entitlement, constitution of the Managing Committee and other allied matters have also been regulated under the provisions of the Green Book. The canteen was established on 21.1.1986 and was got registered with the Director of Canteens (respondent no.3) in the Department of Personnel & Administrative Reforms. The letter dated 26.2.1986 of respondent no.2 addressed to the Director of Canteens seeking registration is at Annexure-4. In response, Director of Canteens, Department of Personnel & Training in his letter dated 11.3.1986 (Annexure-5) called for certain informations and thereafter the Canteen was registered with No.D-129-D. It is submitted by the applicants that the strength of the Canteen employees in respect of "D" Type Non-statutory Canteen is eight and this has been scrupulously followed by the respondents and the staffing pattern and the strength are in conformity with the provisions of the Green Book. It is further submitted that

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the appointment letters, one of which is at Annexure-1 lay down conditions regarding probation, etc., which are in accordance with the provisions laid down in the Departmental Canteen Employees (Recruitment and Condition of Service) Rules, 1980. It is further stated that the concept of paying 70% of pay and allowance of the applicants from subsidy and the balance 30% from the canteen fund is followed by the respondents strictly in accordance with paragraph 3.2 of Chapter III of the Green Book. The applicants were receiving salaries according to pay scales fixed by Government of India in respect of canteen employees as mentioned in Annexure-V to the Department of Personnel & Training Office Memorandum dated 24.11.1986. They have also got revised scale of pay with effect from 1.1.1986, but only 70% of their pay and allowances are paid to them. The balance 30% is to come from canteen fund which represents the profits earned out of sale proceeds of the food articles in the Canteen. But the canteen could not generate funds to the above extent by making profit as the canteen has been set up as a measure of staff welfare and it is expected to function on no profit no loss basis. As such the canteen employees in most canteens could not get their full salary. This issue was raised before the Hon'ble Supreme Court in the case of C.K.Jha and others and P.N.Sharma and others, and the Hon'ble Supreme Court directed Government of India to pay salary to the canteen employees of non-statutory canteens at the same rates and on the same basis on which employees of statutory canteens are being paid. The above order has been complied with by Government of India and canteens were granted interest free loan to meet their additional wage bill to the extent of shortfall upto 30%. Accordingly, these employees have also got arrears of 30% of their salary from their respective dates of appointment. They

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also got ad hoc bonus like other Central Government employees for the financial years 1989-90 and 1990-91. But after that they did not get the bonus. Government of India had further extended all service benefits to the canteen employees like GPF, Gratuity, Pension, etc., but respondent no.2 did not implement the above order even though respondent no.1 in his letter dated 28.5.1992 at Annexure-8 instructed all Regional Provident Fund Commissioners in the matter. It is further stated that the canteen employees of non-statutory departmental canteen/co-operative canteens were extended all benefits like any other Central Government employees with regularisation of service in pursuance of the judgment of the Hon'ble Supreme Court delivered on 11.10.1991 in the Writ Petitions in the cases of C.K.Jha and others and P.N.Sharma and others. Consequent upon the judgment the canteen employees were regularised and treated at par with other Central Government employees of comparable status. Many autonomous bodies where the provisions of Green Book were followed also regularised the services of their canteen employees. The applicants have pointed out that canteen employees of Central Rice Research Institute, which is an organisation under Indian Council of Agricultural Research, were regularised in the order at Annexure-9 and similar canteen employees of another autonomous body, i.e., Regional Research Laboratory have also been regularised, but in the case of the applicants no such step was taken. The office of respondent no.2 had moved the office of respondent no.1 in letter dated 21.5.1993 (Annexure-10) for implementing the judgment of the Hon'ble Supreme Court in respect of these canteen employees, i.e., the present applicants. While the situation stood as such, respondent

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no.3 in his letter dated 26.8.1994 (Annexure-11) has deregistered the canteen on the ground that the employees working in canteens/tiffin rooms run by autonomous bodies/Government undertakings,etc., are not covered by the Green Book and these organisations are not required to register their canteens with the Director of Canteens. The applicants have stated that they have already put in 4 to 9 years of service and therefore they are entitled to be regularised as employees of respondent nos. 1 and 2. On the above grounds, they have come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the Employees Provident Fund Organisation is a statutory organisation governed by the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952. Instructions and circulars issued by Central Provident Fund Commissioner (respondent no.1) govern the functions of the organisation. Respondent no.1 works on the direction of the Central Board of Trustees under the provisions of the Act. In view of the statutory enactment, the respondents have submitted that all the instructions issued by different Departments of Government of India are not applicable mutatis mutandis to this organisation unless the same are approved and issued by Central Provident Fund Commissioner. The respondents have stated that the applicants have been prompted to file this application because of the letter of the Director of Canteens at Annexure-11 deregistering the canteen running in the office of respondent no.2 which was earlier registered by Director of Canteens under a misconception. In this letter at Annexure-11 respondent no.3 has clearly mentioned that the provisions of the Green Book, orders, instructions, etc., are not applicable to autonomous organisations, public sector undertakings, etc., and the

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deregistration has been given effect to immediately. Consequently the provisions of the Green Book are not applicable to the petitioners. It is further stated that after deregistration of the canteen the applicants have no locus standi as employees of the canteen and their appointments are void ab initio. It is further stated that till date the services of the petitioners have not been regularised and therefore, they cannot come within the purview of the Employees Provident Fund Organisation and their application is not maintainable. It is also stated that the appointments made by the then Managing Committee were provisional as the provisions of the Green Book are deemed to be not applicable to the applicants. It is further stated that the applicants are getting 70% of the wages depending on the allotment given on that account by respondent no.1 in favour of respondent no.2. The respondents have also stated that the Green Book lays down that minimum level of profit should be 30% which may be paid as wages to the workers, i.e., the applicants. Thus, the respondents have stated that it is clear that the canteen is supposed to be a profit-making body and the employees of the canteen are not salaried employees of the organisation. The respondents have stated that at one stage it was felt to have a departmental canteen as a measure of welfare and therefore the Central authorities of the organisation requested in letter dated 6.2.1985 for opening a departmental canteen in the Regional Office. This letter dated 6.2.1985 has been enclosed as Annexure-R/1, but actually this Annexure has not been enclosed. In view of this, this portion of the averment in paragraph 4 of the counter is quoted below:

".....During a point of time it was felt necessary to have a Departmental Canteen as a measure of welfare and

therefore the Central Authorities of the organisation requested vide letter dated 6.2.1985 (Annexure-R/1) for opening a Departmental Canteen in the Regional Office. The Managing Committee of the Board's Departmental Canteen was formed and by orders of the Central Authorities the Regional Provident Fund Commissioner's office delegated powers equal to those enjoyed by the Head of Offices. Accordingly the Regional Provident Fund Commissioner allowed employees to open canteen in the Regional Office at Bhubaneswar and the canteen started functioning with effect from 26.11.86. At the relevant time it was believed that the said canteen needed registration under the Director of Canteens. After observing all the formalities the Canteen got registered with the Director of Canteens, Government of India, Department of Personnel & Training, New Delhi and was allotted with a Registration number D/129/D. A Managing Committee was formed to run the canteen and the Managing Committee appointed the applicants. The services of the applicants have been regulated as per the Green Book of the Director of Canteens upto the date of de-registration by the Director of Canteens....."

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The respondents have stated that the applicants were governed as per the instructions in the Green Book till 26.8.1994, i.e., the date of deregistration of the Canteen. The Regional Provident Fund Commissioner, Bhubaneswar (respondent no.2) had requested the Central Office as to what would be status of the employees after deregistration. The respondents have stated that this matter is under active consideration of the Central Commissioner for departmentalisation of the canteen employees engaged in canteens of different offices of the organisation. But the Central Provident Fund Commissioner (respondent no.1) has not clarified the status of the canteen employees as the Central Board of Trustees have not cleared the scheme. In view of this, the respondents have stated that the claim of the petitioners for regularisation is premature. The

respondents have admitted that although the canteen is to run on no profit no loss basis, yet to make up 30% of the wages of the employees of the canteen, the Canteen has to earn some profit to the above extent. It is also submitted that interest free loan is given to run the canteen and not to pay the wages of the employees. It is also submitted that in obedience to the decision of the Hon'ble Supreme Court, applicant nos.3,4 and 5 have been paid the arrears of 30% of the wages with effect from the dates of their appointment along with other applicants from 1.3.1993 to 31.5.1993. As no grants have been received and the canteen sustained loss continuously, it was not possible on the part of respondent no.2 to disburse 30% of the wage bill as interest free loan. It is further submitted that services of the employees have not been regularised for the reason that the status of the employees has not been cleared by the Central Board of Trustees and as soon as the status is finalised and the scheme is framed, respondent no.2 will be in a position to deal with the matter. It is also submitted by the respondents that it is well settled by Government of India that the employees who have been registered with the Director of Canteens can be regularised in terms of the judgment of the Hon'ble Supreme Court. But as in the instant case the alleged canteen has been deregistered it is not open for the applicants to claim regularisation as employees of the registered canteen. On the above grounds, the respondents have opposed the prayer of the applicants.

4. We have heard the learned counsel for both sides and have also perused the records. The learned counsel for the petitioner has filed written note of submissions and a memo of citations which have also been taken note of.

5. Before considering the submissions made by the learned counsel of both sides, two developments after the filing of this OA on 7.2.1995 have to be noted. First is that in order dated 9.3.1995 the Central Provident Fund Commissioner ordered for departmentalisation of canteen employees engaged in canteens in the various offices of Employees Provident Fund Organisation subject to certain conditions mentioned in this order. The second development is that activities of Bhavishyanidhi Canteen of Bhubaneswar Regional Office of the Provident Fund Organisation were suspended with effect from 31.3.1995 to allow Bhubaneswar Development Authority to take up construction work of a new office building and due to want of space to run the canteen.

6. The learned counsels of both sides have referred to the various decisions of the Hon'ble Supreme Court in which their Lordships have ordered that employees of non-statutory canteens in Central Government offices will be treated as regular employees of the Department. It has been urged by the learned counsel for the respondents that the Employees Provident Fund Organisation is an autonomous organisation and is guided by its own rules and instructions, and as per the policy decisions taken by the Trustees. In view of this, the law, rules and instructions applicable to employees of non-statutory canteens of Central Government offices are ipso facto not applicable to the case of the petitioners. The Employees Provident Fund Organisation is not a Government department and under the Factories Act, no obligation is cast to run the canteen and it is not mandatory to provide canteen facilities to the employees of the Employees Provident Fund Organisation. As a

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second limb of argument it has been urged that though the canteen operated from 1986 it was not started or continued with the approval of the Central Provident Fund Commissioner and none of the petitioners was recruited following any Recruitment Rules and had never been treated as employees of the Department, casual or otherwise. It is further stated that the Welfare Committee decided that the canteen should be started and that is how the canteen came into existence. Later on when the Welfare Committee decided that there is no need to run the canteen because there is no space for running the canteen, the canteen was suspended and the services of the applicants were terminated. It is stated that the applicants therefore cannot claim regularisation.

7. We have considered the above submissions carefully. The fact of the matter is that even though the Central Government rules, etc., may not be by itself applicable to the employees of the Employees Provident Fund Organisation, but with the approval of the Trustees and the Central Provident Fund Commissioner these rules and instructions can be applied mutatis mutandis. In the above context we note that in order dated 9.3.1995 which is at Annexure-4 to MA No.226 of 1995 it has been mentioned that the matter regarding departmentalisation of canteen employees engaged in canteens in various offices in EPF Organisation in the light of Central Government decision pursuant to the Hon'ble Supreme Court's direction with regard to Central Government Offices canteen employees was placed before the Executive Committee in its 17th meeting held on 2.2.1995 and the Executive Committee approved the proposal of departmentalising the services of such canteen employees as employees of EPF Organisation subject to the

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conditions mentioned in this order. From this it is clear that already a decision has been taken to departmentalise the canteens and for treating the canteen employees as employees of the EPF Organisation. The learned counsel for the respondents has made elaborate submissions stating that the applicants are not entitled to be regularised because the eligibility for regularisation is available only to those office canteens which have been opened upon clearance and approval obtained from the competent authority of the Central Office. In the instant case we find that the canteen started operating from 1986 and 70% of the cost of the staff used to be borne by the EPF Organisation and 30% was to be borne from the profits of the Canteen. It has been submitted on behalf of the respondents that 70% of the cost of the staff was not borne by EPF Organisation which merely sanctioned grants to the Welfare Fund and the welfare fund administering authorities released funds for meeting 70% of the cost of the canteen staff. This contention is unacceptable because the practice has gone on for a number of years and the Central Provident Fund Commissioner has released funds for the above purpose. Most importantly the canteen was recognised by the Director of Canteens though erroneously and later on the registration was cancelled. But the very fact that for registration of the canteen the Director of Canteens was moved and registration was accorded proves that the canteen was started and continued with the approval of the Central Provident Fund Commissioner.

8. The next contention of the learned counsel for the petitioner is that the circular dated 9.3.1995 provides that employees to the extent appointed as per the norms prescribed by the Department of

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Personnel/Director of Canteens only shall be considered for regularisation and any excess appointment made beyond the norms cannot be regularised. It is also provided that such of the employees of the Office Canteens who are appointed by following the due process, i.e., by holding proper selection by the Management Committee and/or other appropriate authority, shall be eligible for regularisation. The applicants in their petition have made elaborate submissions that the staff were appointed in the canteen strictly in accordance with the norms of the Green Book and this averment has not been denied by the respondents in their counter. Even though the Green Book as such may not be applicable ^{↓Jm} moreso after derecognition of the Canteen. The respondents have themselves mentioned in the circular dated 9.3.1995 that the norms prescribed by the Department of Personnel and Director of Canteens shall be considered. As the applicants have been appointed strictly according to the norms, this condition is also squarely fulfilled in their case. As regards their actual appointment the petitioners have mentioned in paragraph 4.5 of the OA that the appointment letters are in compliance of the provisions as laid down in the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980. The respondents in paragraph 7 of their counter dealing with the averments in paragraphs 4.4 and 4.5 of the OA, have not denied this. From the copies of appointment letters enclosed to the OA it is seen that all the persons were appointed on the basis of their performance in the interview and also recommendation of the Selection Committee. In case of some persons like the Halwai apparently a trade test was also conducted. In view of this, the contention of the learned counsel for the respondents that the applicants were not selected following

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any rules and procedure is rejected. The instructions also provide that employees in canteens which are run on co-operative basis shall also be eligible for regularisation. Where the canteen is run by a co-operative society, the canteen staff are obviously the employees of the co-operative society. But even in those cases, it is provided in this circular dated 9.3.1995, that such employees of the co-operative society will also be regularised as employees of EPF Organisation. In the instant case the canteen was run as a departmental unit and therefore the prayer of the applicants for their regularisation is squarely covered by this circular dated 9.3.1995.

9. The next question which arises is that admittedly on 31.3.1995 the canteen was suspended because the concerned portion of the building was demolished and there was no space to run the canteen. But this will not affect the question of regularisation for the simple reason that in paragraph 5 of this circular dated 9.3.1995 it has been provided that regularisation of the canteen employees will be notionally effective from October 1991 and such of the employees who are eligible for regularisation on the above pattern shall become eligible for certain benefits like medical attendance, bonus, etc., with effect from 2.2.1995 which is the date of approval of the Scheme by the Executive Committee. From this it is clear that even though the circular has been issued on 9.3.1995, the benefit of regularisation has been given retrospective effect from October 1991 and from 2.2.1995 when the Executive Committee took the decision for regularisation. In view of this, it is also provided in the circular that the case of regularisation of the canteen

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employees should be taken up and referred to the Central Office for according necessary clearance for the purpose of initial regularisation. As the regularisation is to be effective from October 1991 and as these applicants have been appointed as canteen employees on different dates ranging from 26.11.1986 to 11.12.1990 the respondents are directed to consider regularisation of these employees, in accordance with the circular dated 9.3.1995 and our observations above, notionally from October 1991 and granting of benefits from 2.2.1995 as provided in the circular. This process of sending proposal to the Central Office for regularisation and the decision of the Central Office on the question of regularisation should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

10. It has been submitted by the learned counsel for the respondents that on the suspension of the activities of the canteen, the applicants have been retrenched. But as their right for getting regularised accrues from October 1991, the question of regularisation will have to be determined with reference to October 1991 notionally and effectively from 2.2.1995. In view of this, their subsequent retrenchment on 31.3.1995 the bona fide of which has been strongly questioned by the learned counsel for the petitioners and which we need not go into in view of our above order, will have no effect on the question of consideration of their regularisation.

11. In the result, therefore, the Original Application is allowed in terms of the observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
11/8/2000
VICE-CHAIRMAN