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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 807 & 862-869 OF 2005
CUTTACK, THIS THE 17th DAY OF OCTOBER, 2006

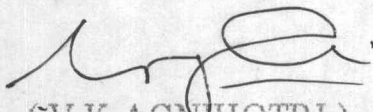
Jogesh Chandra Nayak & Ors.....APPLICANTS

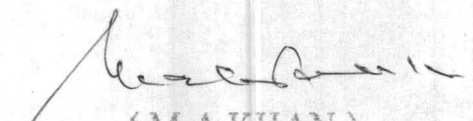
VS

Union of India & Ors.RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(V.K. AGNIHOTRI)
MEMBER (ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 807 & 862-869 OF 2005
CUTTACK, THIS THE 17th DAY OF OCTOBER, 2006

CORAM:

HON'BLE MR. JUSTICE M.A.KHAN, VICE-CHAIRMAN

HON'BLE MR. V.K.AGNOHOTRI, MEMBER (ADMN.)

.....

Shri Jogesh Chandra Nayak, aged about 46 years, son of late Buddhiram Nayak, Secretary General, All India Central Govt.-Canteen, Employees and Workers Association, Head Quarters Office, At/PO-Bhubaneswar, Dist.-Khurda, Orissa, and at present working as General Manager A.G.Canteen, office of the Accountant General (A&E), Orissa, Bhubaneswar, Dist.-Khurda.

.....Applicant (IN O.A.NO.807/05)

Shri Khageswar Jena, aged about 44 years, son of late Gandhi Jena, resident of Vill/PO-Achyutput, Via-Rajkanika, Dist.-Kendrapara. At present working as a Manager Grade-III, Departmental Canteen office of the Deputy Director General, Geological Survey of India, Nayapalli, Unit-8, Bhubaneswar, Dist.-Khurda.

.....Applicant (IN O.A.NO.862/05)

Shri Pramod Kumar Palai, aged about 42 years, s/o. bijay Kumar Palai, working as Sales man A-type Tiffin Room, Office of the S.P. CBI(ACB), Unit-8, Nayapalli, Bhubaneswar, Dist.-Khurda.

.....Applicant (IN O.A.NO.863/05)

Shri SK.Riyazuddin, aged about 42 years, son of late SK.Sayazuddin, at present working as Clerk, Departmental Canteen, Office of the All India Radio, Cuttack.

.....Applicant (IN O.A.NO.864/05)

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Shri Rabi Narayan Das, aged about 45 years, son of Arakshita Das, working as a tea-coffee maker, Departmental canteen, office of the Directorate of Census Operation, Janpath Unit-9, Bhubaneswar-22, Khurda.

.....Applicant (IN O.A.NO.865/05)

Shri N.ganapati Rao, aged about 45 years, son of M. Bhagirathi, working as a wash boy of Departmental Canteen office of Commissioner of central Excise and Customs, Rajaswa Vihar, Vanibihar, Bhubaneswar.

.....Applicant (IN O.A.NO.866/05)

Shri Bibachha Digal, aged about 40 years, son of late Aripa digal, working as a sweeper, Departmental Canteen, office of the Accountant General (A&E) Orissa, Bhubaneswar-1, Khurda.

.....Applicant (IN O.A.NO.867/05)

Shri Bairagi Sahoo, aged about 45 years, son of Brundaban Sahoo, working as a Halwai, office of the Chief Commissioner of Income tax, Iyakar Bhaban, Rajaswa Vihar, Bhubaneswar-7, Dist.-Khurda.

.....Applicant (IN O.A.NO.868/05)

Bishnu Charan Sahoo, aged about 46 years, son of Bairagi Sahoo, working as Assistant Halwai, Departmental Canteen, office of the Accountant General (A&E), Orissa, Bhubaneswar, Dist.-Khurda.

.....Applicant (IN O.A.NO.869/05)

Advocate(s) for the Applicants - M/s. K.C.Kanungo,
Miss. C.Padhi, S.Adhikari

VERSUS

1. Secretary, Ministry of Finance, Govt. of India, Central Secretariat, North block, New Delhi-1.
2. Secretary to Govt. of India, Ministry of Personnel, Public Grievance and Pensions, North block, Central Secretariat, New Delhi-1.
3. Director of Canteen, Department of Personnel, Loknayak Bhawan, 3rd Floor, Khan Market, New Delhi-3.

.....Respondents.

Advocate(s) for the Respondents - Mr. U.B.Mohapatra, (Sr..S.C.)

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ORDER

Mr. Justice M.A.Khan, Vice-Chairman:

Similar question of law and facts are involved in all these nine O.As. So they can conveniently be decided by one common order.

2. The applicants have filed these O.As. assailing office memorandum dated 22.12.2004 (Annexure-A/1) issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training of Govt. of India for implementation of Staff Inspection Unit (S.I.U.) recommendation on the review of norms for non-statutory Departmental Canteens functioning in Central Government Offices.

3. The case of the applicants in this joint O.A. is as follows:

Applicant No.1 claims to be the Secretary General of All India Central Government Canteen Employees and Workers Association and applicants nos. 2 to 9 are its members. These applicants are aggrieved by the revised report of Staff Inspection Unit (SIU, in short) on the review study of norms for Departmental Canteens which has been implemented by O.M. dated 22.12.2004. The applicant no.1 Association allegedly represent about 70% of canteen employees of non-statutory Departmental Canteens located in various Ministries/Departments/Offices of Govt. of India all over the country. None of the Association of the canteen employees has been recognized by the Govt. of India. It is the subject matter of a writ petition W.P.C.No. 7103/2004 pending in the High Court of Orissa. Pursuant to the order of the Hon'ble Supreme Court in Writ Petition Nos. 6189-7044 and 8246-8255, titled as C.K.Jha and others vs U.O.I and others, and P.N.Sharma and others vs. U.O.I and others, the employees of non-statutory canteens working in the Central Government - Ministries, Department and

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offices were conferred status of Government employees in 1990. The service conditions of the canteen employees including the functioning of canteen and cadre structure of the canteen employees, even prior to the decision of Hon'ble Supreme Court were reviewed by Respondent Nos.2 and 3 from time to time, which are available in Compilation of Administrative Instructions on Departmental Canteens in Industrial Establishment of the Government, which is popularly called as 'Green Book'. The service conditions of the canteen employees are governed by the rules called Departmental Canteen Employees (Recruitment and Conditions of Service) Rules 1980 (hereinafter, referred to as 'Recruitment Rules of 1980'). The Green Book, inter-alia, prescribes the types of canteens and Tiffin rooms depending upon the strength of office staff and other policy matters including menus, quality control, etc. Recruitment Rules of 1980 were replaced by Model Recruitment Rules, 1995, which are in force now. Staffing pattern for formulation of service conditions of the canteen staff took a long period since it was done by in-depth study and gradual development of the canteens over a period of time. The SIU undertook a haphazard and unscientific study of the norms of the canteens prescribing the revised categories of canteens with range (number of employees served) and the staffing norms of different canteens. The revised classification of the canteens and staffing norms going to be implemented vide O.M. dated 22.12.2004 has increased doubling the range of employees (users) resulting in immediate degradation of canteens and consequential adverse effect on their service conditions. O.M. dated 22.12.2004, Annexure-A/1 indicates the increase in the number of employees served and other allied decisions are based on the workload factors, which have been derived by calculating the number of coupons being sold. It is unreasonable as the real beneficiaries

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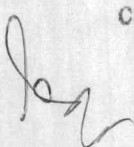
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served are much higher. It is to note that the sample collected and studied by the SIU from Delhi based canteens cannot be treated as a conclusive study to determine the actual workload of canteens since they do not represent the canteens located in the States where Central Government Offices are located. The basis of the study is, thus, defective and naturally the consequential decision is bound to be wrong. The SIU also might have been swayed away by looking at the improvement in the working of canteens due to introduction of new facilities/automation such as hot water boilers, mechanized mixture/grinders, electronic cash coupon register, etc. Such facilities may be available in Delhi based canteens, but may not be available in other canteens irrespective of the types located in various Central Government offices in different States. When the functioning of the canteen is based on the principle of "No loss No profit" and that too when the tariffs of food articles are monitored/regulated by a committee, no fund is generated by canteen to afford to such facilities. The development grant which was earlier provided to the canteens has been discontinued since long. Hence, O.M. dated 22.12.2004 cannot be sustainable in law in view of the arbitrary revision of the norms of the non-statutory Departmental Canteens. In the matter of policy decision, the Tribunal will interfere if it is arbitrary reflecting non-application of mind and in the present case sample survey done at Delhi and equating the same with the rest of the hundreds of the canteens functioning in the various parts of the country is not reasonable and so the policy is unsustainable.

4. The Respondents in their counter have contested the claim of the applicants. It is submitted that O.Ms. dated 13.10.2001, 22.12.2004 and 19.07.2005 were issued in compliance with the order of the Hon'ble Supreme Court dated 08.10.2004 in CWP No. 510/03. It is stated that with a

for

view to achieve effective functioning, rationalization of manpower and streamline the functioning of non-statutory canteens and to make these canteens more responsive to the present day needs of the Central Government employees, Staff Inspection Unit of the Ministry of Finance (Department of Expenditure) was entrusted a detailed study on the norms for the staffing pattern in such canteens and it submitted its recommendations. The SIU made the recommendation after assessing the workload, job requirements and other related aspects in the canteens. After in-depth examination of the recommendations, they were accepted by the Government and orders for their implementation issued vide DOPT, OM No.22.12.2004 impugned in the present O.A. These SIU studies are a part of Government's continual process of bringing in appropriate changes in the hierarchical structure of Government staff/ organizational structure so that norms that have become outdated with the passage of time could be revised. SIU recommendation involved re-categorization of canteens entailing creation/abolition of posts and upgradation/revision of designation nomenclature for certain categories of posts in the canteens. The recommendations are a package in nature and have to be considered as an integrated one and in totality. However, after implementation of the revised staffing norms, any canteen employee (permanent or temporary with not less than five years of service) getting surplus will be transferred to the surplus pool of the Government and will continue to get his pay and allowances till re-deployment/retirement in normal course. The permanent surplus employees have the option to take special VRS also. Hence the apprehensions of the applicants with regard to retrenchment of canteen staff are baseless. While the SIU report regarding revised staffing norms in the canteens was under consideration, one Shri V.N.Sharma, General Secretary



of the Canteen Mazdoor Sabha, filed a petition, CWP No. 510/2003, before the Supreme Court seeking the speedy implementation of SIU report. Shri Jogesh Chandra Nayak, Secretary General of the 'All India Central Govt. Canteen Employees and Workers Association' (Applicant No.1, herein) filed an intervention application for being impleaded and heard in the petition on the ground that SIU report will render many canteen employees 'surplus'. The Respondents further alleged that non-statutory canteens, set up as a measure of staff welfare, have been in existence since Fifties to provide eatables, etc. prepared in hygienic condition, to Central Government employees at reasonable rates during office hours. On the recommendations of the Second Pay Commission, some uniformity and rationality were brought in the functioning of these canteens. With a view to further streamline this staff welfare activity, Government decided to treat all posts in the canteens and Tiffin Rooms run departmentally as posts in connection with the affairs of the Union and the incumbents of such posts as holders of 'civil posts'. The Government issued notification in this regard on 11.12.1979. The Conditions of Service of Canteen Employees Rules were notified on 23.12.1980. The canteen employees were not considered full-fledged Government employees under these Rules. However, they were clamoring for the status of Government employees. So they petitioned before the Supreme Court. The Supreme Court passed interim order on 26.09.1983 directing the Central Government to pay all employees of non-statutory canteens at the same rate and on the same basis on which employees of statutory canteens were being paid. Accordingly, these employees were given regular pay scale vide DOPT, OM dated 03.11.1983. Their pay scales were revised from 01.01.1986. The Supreme Court by order dated 11.10.1991 decided the aforesaid writ petition and pursuant to that

order canteen staff were declared as Central Government employees from 01.10.1991 and were extended all benefits at par with other employees of temporary status.

5. According to the Respondents with a view to achieve efficient functioning and rationalization of manpower in the non-statutory canteens, the SIU undertook a detailed study on the norms for staffing pattern in these canteens and submitted its recommendations which were implemented vide DOPT, OM dated 22.12.2004. After implementation of the SIU recommendations, the new hierarchy of post in these canteens occurred whose designation and the pay scales are given in para-6 of the counter. The SIU recommendations were accepted by the Government after careful examination and in-depth study of all related aspects through inter-departmental meetings/consultations by the representatives of the Ministry of Finance (Department of Expenditure), SIU, DOPT and the Ministry of Home Affairs (Integrated Finance division). These recommendations do not have any adverse effect on the canteen/canteen staff.

6. At the outset, Ld. Counsel for the applicants has submitted that the present O.A. has not been filed as a public interest litigation, but has been filed for redressal of the grievances of the applicants against the policy decision contained in O.M.dated 22.12.2004. He also conceded that Tribunal's power and jurisdiction to interfere in the policy is very limited and that too when the policy is arbitrary, capricious or is contrary to the provisions of the statute or the Constitution of India. Having said so, he submitted that the members of the applicant no.1 Association would be adversely affected by the change in norms of classifying and categorizing different canteens and the change in the nomenclature and designation of canteen staff like the post of Cook and Halwai which have a distinct job. It is

submitted that duty of Halwai is to prepare sweets and other items of tiffin whereas a Cook prepares the food for the lunch. The specialization is also different. The number of users is almost equal and, therefore, the SIU seems to have acted under misconception of underutilization of manpower without any basis. Hence the clubbing of two posts is highly impractical and it will lead to serious functional difficulties in the canteen. Similarly, the post of Manager-cum-Accountant has been created whereas earlier there was no post of Accountant. As per existing norms 'D' type canteen does have a Manager Grade-III with a scale of pay of Rs. 3200-4000/- and a post of Accountant existed in 'A' type canteen in the scale of Rs. 4000-6000/-. The duty of a Manager is to regulate and supervise the functioning of a canteen and that of the Accountant is related to maintenance of the accounts of a canteen. In '2A' Type and above canteens the staff strength has been drastically reduced when the range of the users has been doubled and that too without any justifiable reason. He fervently argued that SIU in an arbitrary manner collected samples for its study only from Delhi based canteens which could not have portrayed the actual workload of the canteens located in various parts of the country, since they cannot be representative samples of the canteens located in States where Central Government canteens are located. It is submitted that workload factor for the States has undertaken from Delhi based canteens only, which cannot be accepted since they do not represent the actual workload of different types of canteens located in various canteens in States. It is, therefore, submitted that policy decision implemented vide O.M. dated 22.12.2004 is arbitrary and capricious and so it could be challenged by the applicants.

7. The Ld. Counsel for the Respondents raised a preliminary objection that none of the applicants could possibly file this O.A. by virtue

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of Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules 1987 since the applicant No.1 and its members or applicant no. 2 to 9 herein would not be prejudicially affected by the implementation of the SIU revised report by O.M. dated 22.12.2004. The aforesaid rule allowed an Association to file an O.A. provided at least one person is impleaded who is affected by the order which is impugned in the O.A. In the present case, the memorandum dated 22.12.2004 as well as the counter reply amply clarify that the implementation of the SIU recommendations issued vide O.M. dated 22.12.2004 will not adversely affect the service and emoluments of the present employees and those with 5 years of service who will be rendered surplus will be deployed elsewhere and they will not be retrenched or thrown out of employment. Applicants have no answer to that. It has not been explained before us as to how applicant nos. 2 to 9 would be affected by the implementation of the recommendation of the SIU by the impugned memorandum. The Ld. Counsel for the applicants has also been fair in conceding that the Government has the power to alter the service conditions and the nomenclature and designation of the various posts under the Government or even the service conditions and Recruitment Rules and the employees do not have any indefeasible vested legal right to complain against such actions so long as the Government action has not taken away any vested legal right of the Government employee. In the present case, the Ld. Counsel has not been able to satisfy us as to how the applicant nos. 2 to 9 or any of the members of applicant no.1 Association can be prejudiced by the impugned order in the matter of their pay scale or service conditions. The Government has prerogative to change the recruitment rules and change the designation of the employee, create or abolish the post or merge two posts and prescribe new pay scales. The SIU recommendations which are the

basis of the issuance of the impugned O.M. dated 22.12.2004, have in fact tend to improve the pay structure of certain posts, create new higher posts thereby making more posts available for promotion of the lower functionaries.

8. Ld. Counsel for the applicants does not contend that it is the first time that service conditions and categorization of the employees of the non-statutory Government Canteens have been changed. The Recruitment Rules of 1980 have been changed in 1995. The status of the employees have also undergone a great change. After the judgment of the Hon'ble Supreme Court in the writ petitions the employees have been conferred the status of the regular Government employees. They are not losing out anything rather they are gaining more by creation of new higher posts in the canteen and also higher pay scale. Merger of the post of Cook and Halwai or Manger and Accountant are the matter which only an expert body like SIU is fit to decide. It requires in-depth study of the canteens and the workload. The applicants' complaint that SIU report is based only on the samples of Delhi canteens, in our view, is unsubstantial. The exercise undertaken by SIU in Delhi may be because the number of canteens functioning in Delhi will be more and they may be of different categories and ranges. They include the category / range of the canteens which are functioning in other parts of the countries including Income Tax Office, Bhubaneswar. Therefore, discarding the report of SIU even on the ground that the study has been carried out in Delhi alone is not enough to doubt its correctness. In fact it has been controverted by the respondents that SIU report is based only on the study of canteens in Delhi. It is submitted that report was discussed with different Ministries and Departments and views were communicated to the SIU which submitted its revised recommendations and only thereafter OM dated

22.12.2004 was issued to implement them. The arguments of the Learned Counsel for the applicants that SIU has no power to submit a revised report, to our view, is misconceived. ISU is a statutory body and can revise its report for consideration of the Government.

9. The Ld. Counsel for the Respondents has also pointed out that one Shri V.N.Sharma, General Secretary of the Canteen Mazdoor Sabha had filed a writ petition CWP No. 510/03 before the Hon'ble Supreme Court seeking the speedy implementation of the SIU report and the Secretary General of the Applicant No.1 Association, All India Central Government Canteen Employees and Workers Association had filed an intervention application in the said writ petition for being impleaded. The counsel for both the parties had drawn our attention to the interim orders which were passed by the Hon'ble Supreme Court in the said writ petition. It is evident that the Hon'ble Supreme Court had given time to the Government to come out with the decision and implement the report of SIU. From the order dated 22.03.04, it appeared that the Supreme Court was told that SIU report was under consideration and some decision was likely to be taken in six weeks time. The Supreme Court directed ^{the} ~~the~~ decision ^{to} ~~be~~ taken. Vide order dated 05.07.2004 again it appeared and additional affidavit was filed seeking further time for taking decision on the SIU report. The Supreme Court directed that the affidavit would be filed on behalf of the Respondents as to what stand has been taken in order to find out a solution to the dispute. By order dated 08.10.2004, the time was extended by further three months and in default, the Director of Canteen was directed to personally present before the Court to explain his failure to abide by the Court's order. The Supreme Court allowed the Government to take a decision in the matter within the time stipulated and the Government issued the notification dated 22.12.2004

accordingly. After the O.M. was filed, the writ petition was dismissed as withdrawn by order dated 10.03.2005 leaving parties to move appropriate forum. It is submitted that the O.M. in question has been issued by the Government in accordance with the direction of the Supreme Court.

10. From the argument of the Ld. Counsel for the applicants, it appeared that the grievance of the applicants is that the Government had talked to their rival employees' Association and did not invite them to seek their comment on the SIU report which is the main reason of filing this O.A. by applicant No.1 Association. It has not been disputed that the other Association of the employees has wholeheartedly supported the ISU recommendation and had sought its speedy implementation and for this purpose, it had filed a writ petition before the Hon'ble Supreme Court. Under the directions issued by the Hon'ble Court from time to time, the Government took the decision on the SIU report and revised report, and issued O.M. for implementation of final recommendation. It is not denied that the O.M. dated 22.12.2004 would apply to all the non-statutory Government Canteens all over the country in different places wherever the Central Government offices are located. But only applicant no.1 Association is agitated. The Government has taken a policy decision which is within its domain and the Tribunal cannot interfere with it unless the policy is in contravention of statutory enactment or provisions of the Constitution of India or capricious and arbitrary (See Sher Singh & ors. Vs. Union of India & ors., JT 1995(8) SC 323.). The applicants are unable to establish that this policy decision is arbitrary, capricious or malafide or that the policy decision is contravening the statutory Rule or Act or the provisions of the Constitution of India. There is no allegation that any Act, Rule or any of the provisions of the Constitution of India has been violated by issuing O.M.

For

dated 22.12.2004. Nothing has come out from reading of the O.A. or in the arguments on the basis of which we may infer that the O.M. dated 22.12.2004 has been issued by the Government on account of any malafide or capricious motive or intention.

11. The Ld. Counsel for the applicants has cited Ahmedabad Municipal Corpn. vs. Nawab Khan Gulab Khan and others, AIR 1997 SC 152. The case related to the removal of encroachment by Municipality and the Hon'ble Supreme Court observed:

“ no flexible rule of hearing and due application of mind can be insisted upon in every or all cases and that each case depends upon its own backdrop. It was further observed that the removal of encroachment needs urgent action . But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. It was further stated that if the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time consuming process leading to putting a premium for high-handed and unauthorized acts of encroachment and unlawful squatting. It further observed that Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice fore removal is necessary.”

He has also referred to another Supreme Court Judgment in the matter of State of Tamilnadu vs K.Sabanayagam (AIR1998 SC 344) where Tamilnadu Housing Board raised the question as to whether Payment

of Bonus Act would be applicable to the Housing Board. The Hon'ble Supreme Court held as follows:

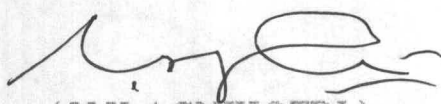
" Now if it is contended that any personal hearing is to be given to the employees likely to be affected by the exercise of such power either personally or through their accredited representatives like the trade union leaders or others then such a contention cannot be sustained on the nature of the power conferred under Section 36 of the Act on the appropriate Government, otherwise instead of remaining a conditional legislative power it would assume the characteristics of a quasi-judicial power. It must be kept in view that the appropriate Government does not adjudicate upon the rights and obligations of parties nor does it decide any lis between the parties. All that it does while exercising powers under Section 36 of the Act is to form an opinion on the satisfaction of objective facts regarding financial position and other relevant circumstances in connection with the claimant-establishment or class of establishments which would require in public interest and not necessarily purely in the private interest of the claimants that relevant provisions of the Act should not be made applicable to those claimants for a given period of time. Once the bona fide exercise of power under Section 36 is undertaken the logical consequence is that the benefit otherwise flowing from the scheme of the Act may not be available to the class of employees affected thereby, for that limited period during which the exemption continues. All that is required for such an exercise is, therefore, not any personal hearing to be granted to the employees likely to be affected by the said exercise but they must be given at least an opportunity to put forward their rebuttal evidence or material against the material furnished by the claimant-establishment so that the appropriate Government can have an objective assessment of the relevant date with a view to arriving at a rational, well-informed and reasonable opinion on a comprehensive consideration of pros and cons of the

fact situations concerned calling for such an exercise of power on its part."

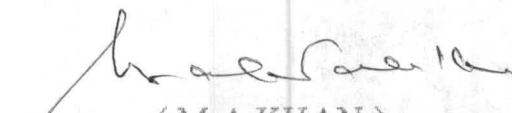
12. The aforesaid judgments do not advance the argument of the applicants. The principles of law enunciated in the aforesaid judgments are on absolutely different facts and circumstances. They cannot be applied to the facts of the present O.A. It has already been noticed that the report and the recommendation of the SIU were discussed with the different Departments and Ministries and even canteen staff and thereafter the Government sent its observation for reconsideration of the recommendation and SIU responded by sending the revised recommendation. The Government has duly applied its mind keeping interest of all and sundry including the canteen employees, who may become surplus and, therefore, none of said decisions supports the contention of the applicants.

13. We have already found that the applicants are not affected by the implementation of the O.M. dated 22.12.2004. So the present O.A. cannot be allowed in view of the Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rule, 1987.

14. For the reasons recorded above, we do not find any merit in the O.A., which is dismissed without any order as to costs.



(V.K.AGNIHOTRI)
MEMBER (ADMN.)



(M.A.KHAN)
VICE-CHAIRMAN