IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 86/1995 199
T.A. No.

DATE OF DECISION 20.9.1995

M. Aslam and 5 Others — Petitioners

Mr. J.K. Kaushik — Advocate for the Petitioner (s)

Versus

Union of India & Ors. — Respondent

Mr. P.P. Choudhary — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K. Verma, Administrative Member.

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

N.K. Verma
(N.K. VERMA)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
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Date of Order :- 20.9.1995

O.A. No. 86/1995.

M. Aslam and 5 others. ...Applicants.

Versus

Union of India and others. ...Respondents.

For the applicants - Shri J.K. Kaushik, advocate.
For the respondents - Shri P.P.Chaudhary, Advocate.

O R D E R

(Hon'ble Mr. N.K. Verma, Member(A)

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In this OA, the applicants have prayed for a direction to the respondents to make payments of monthly salary and other dues to the applicants forthwith with exorbitant rate of interest. They have also prayed for an interim order that pending finalisation of the case, the monthly salaries may be directed to be paid by the respondents. The interim order in this matter was passed for payment of monthly salary on 4.5.95. However, it was brought to notice that the respondents have not complied with that order so far and a Contempt Petition in the matter is awaiting hearing.

2. Brief facts of the case are that the applicants were appointed as Salesmen in the Unit Run Canteen (for short "URC") of the respondents during the years 1980-84 and have been working since then as per terms and conditions issued by the Army Headquarters as per Annexure A/1. The applicants are paid a basic salary plus the usual DA, HRA and CCA. However, they are not entitled to any retiral benefits like the pension and DCRG etc. They are, however,

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full time employees rendering minimum of 8 hours of work a day. Although they are not paid the Central Scales of Pay, they claim to be the part of the Organisation of the respondents in so far as the Canteen where they are working is sanctioned by the Air Headquarters and registered with the Canteen Stores Department which is a department under the Govt. of India. The applicants and 12 other persons had filed an OA before this Tribunal for extending them the due benefits of pay and allowances etc. available to Central Govt. employees. The applicants in this OA have prayed for the relief in the matter of non-payment of their monthly salaries since the month of January, 1995, although they have worked continuously during the same month. They also have stated that one of the applicants has not been paid his due salary for the month of January to March, 1994 and Sept., 1994. Another applicant's salary for the month of March, 94 has not been paid. According to them, non-payment has specifically been due to the actions of Respondent No. 4 who has drawn their pay, but not disbursed the same.

3. The respondents took a preliminary objection that this OA is not amenable for adjudication by this Tribunal as the Tribunal did not have a jurisdiction over the applicants who are not Central Govt. employees The Unit Canteens are operated by Non-Public Funds and the expenditure required to run the Unit Canteens is paid out of the profits earned by the canteens. It has been submitted by the respondents that the test to ascertain whether a person is a civil servant holding the post under Union of India or connected with the affairs of the Union of India is the Head

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from which he is paid. In the case of the Canteens, nothing is being paid by the Defence Service Estimates and there is no Master - servant relationship between the Union of India and the workers of the URCs. URC is not a statutory body created by law. It is a private undertaking of the Units and the funds used by the Canteen are Non-Government funds. The Central Stores Department has no administrative control over the civilian employees of the URCs as these employees ~~as these employees~~ are governed under terms and conditions mutually settled between the Units and the employees. The employees of the URCs are not Govt. servants and the Defence Ministry has no control over their service conditions. In view of these submissions, the respondents have averred that this Tribunal has no jurisdiction to decide the matter of the Unit Run Canteens and the OA is liable to be rejected on this ground alone.

4. However, the respondents have further submitted that the OA is also liable to be rejected on the ground that the applicants have not exhausted remedies available to them before approaching this Tribunal for redressal of their grievances.

5. This matter was heard at length on several dates wherein the preliminary objection taken by the respondents was vehemently argued by the learned counsel for the respondents. Shri Chaudhary reiterated that the URCs are paid out of Non-governmental funds and thus the matter cannot be entertained by the Tribunal. In support of his argument he read out a letter from Army Headquarters issued on 10.2.1995 which says that,"the employees of these URCs are not

Govt. servants and therefore this office (Army Headquarters) has no control/jurisdiction over the service conditions of such employees." During the earlier hearing it was brought to the notice of the counsel of both the parties that a Division Bench of the Bombay Bench in which I myself was a party had admitted a case of Dhobis employed in the N.D.A., Khadagvasla who were paid out of Regimental Funds and it was averred that such members of the staff paid out of Regimental funds could not be considered to be Govt. servants and, therefore, were out of jurisdiction of the Tribunal. The learned counsel for the applicant was asked to have the judgment in that matter referred to for ascertaining the maintainability of this OA. The OA No. 454/92 in the case of Chotelal Babulal Kanojia & ors Vs. Union of India & others decided by the Division Bench of Bombay Bench of the Tribunal on 9.2.1994 was brought to my notice wherein it was held that Dhobis paid out of Regimental funds were holders of civil posts in Defence services and consequently they were given protection of this Tribunal and the respondents were restrained from terminating the services of the applicants in that OA except by weay of superannuation or under disciplinary proceedings. It was, therefore, felt that in view of the judgment of a Coordinate Bench of this Tribunal, the maintainability of this Tribunal was not in doubt any more.

6. During the course of hearing, the learned counsel for the applicant Shri J.K. Kaushik brought to my notice that the applicants were appointed under terms and conditions very well delineated under the orders

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of Air HQ dated 31.1.94. These terms and conditions very clearly lay down as under:-

Rule 2 - Classification of Employees

All employees subject to these rules shall be classified as Temporary Employees, for a period of 5 years after which they may be declared permanent employees.

Rule 3 - Appointment

(1) All appointments shall be made by the appointing authority.

(2) C Ad O/S Ad O shall be the appointing authority. However, at units, where establishment of c Ad O/ S Ad O does not exist, the OC Unit shall be the appointing authority

EXPLANATION: The term "appointing authority" means the person, who for the time being is performing the duties of C Ad O/S Ad O of the Stn or OC unit as the case may be. C Ad O/S Ad O/OC unit will be deemed as appointing authority in cases of all existing employees, even where they were appointed by O I/C Canteen or by some other authority.

(3) A letter of appointment shall be issued in case of every fresh employment.

(4) Every person, before joining shall be required to produce a certificate of medical fitness from a registered medical practitioner that he is not suffering from any communicable or contagious disease. If the appointing authority has any doubt about medical fitness, he may refer the person to a service medical officer whose decision, thereupon shall be final. If a service medical officer declares him to be suffering from any communicable or contagious disease, he shall not be empowered, notwithstanding the certificate of medical fitness given by registered medical practitioner.

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(5) Every person, before joining, shall also be required to furnish certificate of good character from two gazetted officers or Members of Parliament/State Legislature/ Corporation/Municipal Committee, who are not related to him.

(6) No TA/DA shall be admissible for joining the duty on initial appointment or cessation of employment.

Rule 4 Probation period

Every employee, on initial appointment to any post, shall be appointed on probation for a period of six months, which in appropriate cases may be extended to one year. On completion of stipulated period of probation, an employee may be confirmed in his appointment by issuing a letter of confirmation, if his work as well as conduct has been considered satisfactory. Mere completion of probation period shall not amount to automatic confirmation. Employees who have completed one year of probation but have not been confirmed would still deemed to be on probation until confirmed or their services dispensed with.

Rule 5 Fidelity Bond/Cash Security

(1) A person before joining may be required to furnish a fidelity bond and/or cash security for amount(s) as may be specified by the appointing authority on or before the date stated in the appointment letter, failing which the appointment letter shall be deemed to have been cancelled unless an extension of the said date has been granted.

(2) Forfeiture of cash security may be ordered to extent as may be specified by appointing authority for violation of any of these rules.

(3) The security could also be in the form of fixed deposits in the joint names of O i/C Canteen and AOC/CO of the Unit.

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Besides these, the applicants are entitled to several types of leaves like casual leave, privilege leave, leave without pay, and maternity leave. Under Rule 12, they are required to be paid monthly wages on a working day between first and seventh day of the following month. Under the same rule, the employees are entitled to the increments in the rate of pay as may be sanctioned from time to time by the appointing authority. Rule 13, as reproduced below, relates to deductions which may be made from the wages:-

Rule 13 Deductions which may be made from wages.

(1) The wages of an employee shall be paid to him without deductions of any kind except those specified in sub-para (2).

(2) Deductions from the wages of an employee may be made for one or more of the following reasons:-

(a) Deduction for the period of absence from duty or leave without pay;

(b) Deduction for the recovery of advances or for adjustment of over-payment of wages. In no case the monthly deduction on this count shall exceed half of the wages earned in that month.

(c) Deduction required to be made by order of a court or other competent authority. Competent authority for this purpose shall be the appointing authority.

(d) Deduction of Income Tax, if payable b /the employe

(e) Cost of damage or amount of loss of goods entrusted to the employee or for loss of money which he is required to account, where such damage or loss is attributable to his negligence or default or inadequate supervision.

As per sub-rule (e) of Rule 13, the deductions can be made towards cost of damage or amount of loss of goods entrusted to the employee or for loss of money which he is required to account, where such damage or loss is attributable to his negligence or default

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or inadequate supervision. This provision, therefore, enjoins upon the authorities to establish the negligence or default or inadequate supervision before making any deductions from the wages of the applicants. Nothing of this kind was done by the respondents before unilaterally deducting the wages as averred in the OA. Since the main brunt of the averments and arguments of the respondents was on the jurisdiction of the Tribunal to entertain an OA in the matter, Shri J.K. Kaushik dwelt upon the same at length. Shri Kaushik brought to my notice a case cited at (1995) 30 ATC 282 - Parimal Chandra Raha and Others Vs. Life Insurance Corporation of India and others in which the Hon'ble Supreme Court has held that even the canteens are run by the contractors, the employees of such canteens have to be treated as regular employees of the Corporation under whose control the canteens are run. The judgment given in this case is similar to the Hon'ble Supreme Court's verdict in the case of Vendors on the railway station employed by the contractors who were also given the benefit of being railway servants and all the consequential benefits attached to such posts.

7. In the case of LIC (supra), the Hon'ble Supreme Court has held under Para 25(ii) and 25(iii) as follows:-

"Para 25(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 the 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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Para 25(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 a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditionss or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services 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."

In Para 29 of the said judgment, the Hon'ble Supreme Court held as under:-

"The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the Coop. Societies of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further shows that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the

contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees sand of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The services available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service,

on account of the agitation or of a strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

Concluding the judgment, in Para 30, the Hon'ble Supreme Court held, "In view of our finding that the appellants who are the canteen workers in the four offices of the Corporation in Calcutta are entitled to be the employees of the Corporation, the appellants are certainly entitled tothe first relief they have claimed.

8. The canteens (URC) are given free electrical and water connections. Officer-in-Charge of the canteen is an officer of the Air Force working under the Station Commander. Supervision and control of the canteen is the normal duty of the officer detailed for such purpose. They are not paid any additional remuneration for the work performed in connection with the canteen. Besides, a number of full time officials i.e. Canteen Manager, Incharge Counter "C", Accountant-cum-Cashier etc., who belong to the Air Force, are working in the canteen. The terms and

conditions under which they are appointed clearly stipulates that the appointments in the canteen shall be made by the appointing authority and the appointing authority is the Chief Administrative Officer/Sr. Administrative Officer of the Air Force. However, at Units, where establishment of Chief Admn. Officer or Sr. Admn. Officer does not exist, OC Unit shall be the appointing authority. Under Rule 15 of Rules of Conduct, it has been specifically laid down that every employee shall normally work under the direction and supervision of the Officer Incharge, Air Force Canteen or any person authorised by him on his behalf. Under Rule 21, the appellate authority in case of disciplinary proceedings has been prescribed to be the AOC/Station Commander where the appointing authority is Chief Admn. Officer/Sr. Admn. Officer or the OC Unit. Where such units come directly under the administrative control of Command Headquarters or Air Headquarters the SPSO of the Command or Director Org. respectively shall be the appellate authority. With all these provisions existing, it cannot be denied that the employees of the Unit Run Canteens are covered by the ratio of the judgment in the case of LIC (supra).

9. Shri J.K. Kaushik also cited the judgement in the case of M.M.R. Khan and others Vs. Union of India and others reported at AIR 1990 Supreme Court 937. The head note in this judgment reads, "Employees in Statutory and Non-Statutory Recognised Railway Canteens - Are entitled to be treated as railway employees." In Para 29 of the judgment, the Hon'ble Supreme Court held as under:-

> ".....In the first instance, there is hardly any difference between the statutory

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canteens and non-statutory recognised canteens. The statutory canteens are established wherever the railway establishments employ more than 250 persons as is mandatory under the provisions of Section 46 of the Act while non-statutory canteens are required to be established under paragraph 2831 of the Railway Estt. Manual where the strength of the staff is 100 or more. In terms of the said paragraph, the non-statutory canteens to be recognised have to be approved of by the Railway Board in advance. Every Railway Administration seeking to set up such canteens is required to approach the Railway Board for their prior approval/ recognition indicating financial implications involved vetted by the Financial Advisor and Chief Accounts Officer of the Railway concerned. It is only when the approval is accorded by the Railway Board that the canteen is treated as a recognised non-statutory canteen. By the sanction, the details in regard to the number of staff to be employed in the canteen, recurring and non-recurring expenditure etc. are regulated. The only material difference between the statutory canteen and non-statutory recognised canteen is that while one is obligatory under the said Act the other is not. However, there is no difference in the management of the two types of canteens as is evident from the provisions of paragraphs 2832 and 2833 which respectively provide for their management. Regarding the incidence of cost to be borne by the Railways again, as far as the Manual is concerned, the only additional obligation cast on the Administration, in the case of the statutory canteens is that in addition to the facilities given to the non-statutory canteens, the Administration has also to meet the statutory obligations in respect of the expenditure for providing and maintaining canteens arising from the said Act and the rules framed thereunder. A perusal

of the relevant provisions shows that the said Act and the rules made thereunder do not make demands on the Administration for more expenditure than what is provided for in the Railway Manual for the non-statutory canteens. We have already referred to the service conditions applicable to the employees of the statutory and non-statutory canteens. Besides, while discussing the case of the employees in statutory canteens we have pointed out the relevant provisions of the Administrative Instructions on Departmental Canteens in Govt. Offices and Govt. Industiral Establishments. These Instructions are applicable to both statutory and non-statutory recognised canteens. The Instructions do not make any difference between the two so far as their applicability is concerned. In fact, these Instructions require that the canteens run by engaging solely part-time daily-wage workers may be converted to departmental canteens (para 1.3). Hence we do not see why any distinction be made between the employees of the two types of canteens so far as their service conditions are concerned. For this very reason, the two notifications of December 11, 1979 and December 23,1980 (supra) should also be equally applicable to the employees of these canteens. If this is so, then these employees would also be entitled to be treated as railway servants. A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. Surely, it cannot be argued that the employees who otherwise do the same work and work under the same conditions and under a similar management have to be treated differently merely because the canteen happens to be run at an establishment which employs 250 or less than 250 members of the staff. The smaller strength of the staff may justify a smaller number of the canteen workers to serve them. But that does not make any difference to the working conditions of such workers.

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We have already dealt with the other arguments advanced by Shri Ramaswamy while dealing with the cases of employees in statutory canteens. It is not necessary to repeat the said discussion here. We are, therefore, of the view that the case of these employees should be treated on par with that of the employees in the statutory canteens and they should also be treated for all purposes as railway servants...."

In Para 31, the Hon'ble Supreme Court held that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the Railway Establishments are railway employees and they are entitled to be treated as such."

10. A perusal of judgment in the case of M.M.R. Khan also indicates that non-statutory recognised canteens in the Railways are managed by a Co-operative Society and the Society should make a suitable provision in the bye-laws for supervision of the canteen by the Committee of Management in which the Railway Administration has the authority to nominate a representative of the Railway either as a Chairman or a Secretary or a Member of the Committee. This nominee of the Railway Administration is under an obligation to bring to the notice of the Administration any decision of the Managing Committee which is likely to affect the interests of the Railway Admn. in its capacity as an owner of the premises and of the furniture, equipment, etc., or if the decision is likely to be of considerable harm to the staff. In such cases, the Management Committee cannot take action on the particular decision till the General Manager of the Railway has recorded his decision thereon. There is also a provision for granting loans

to the canteens as initial capital besides the various facilities like accommodation, sanitary and electric installations, furniture and cooking utensils. The Railway Admn. is also required to bear rent on sanitary and electric installations, service taxes and charges for the electricity and water consumed. These canteens are also entitled to subsidies to the extent of 70% of the wages of the employees engaged therein.

11. The provisions of the Railway canteens are almost identical to those of the Unit Run Canteens which fall under the control of the Station Commander and for which accommodation etc. are provided by the Unit from the Govt. sources. While there may not be any stipulation for subsidy towards the payment of wages of the staff employed by the canteens, the fact that uniformed officials of the Air Force are employed in the canteens can itself be considered to be the subsidy in kind by the Govt.

12. In view of the above two judgments of the Hon'ble Supreme Court , the canteen employees have to be considered to be defence employees and, therefore, amenable to the jurisdiction of the Tribunal. In support of this argument, Shri Kaushik also referred to the Chandigarh Bench judgment in OA No. 271/CH/1991, decided on 14.11.91 in the case of All India Defence Civilian Canteen Employees Union Vs. Union of India and others, wherein a Division Bench had held that "so far as the preliminary objection pertaining to the lack of jurisdiction of the Tribunal is concerned, the learned counsel banking upon the Full Bench Decision of the Tribunal in Rehmat Ullah Khan and others Vs. Union of India and others contended that employees of the Canteen [illegible] serving the officers and men of the Air Force, are serving in connection with the

affairs of the Union and as such the Tribunal has the jurisdiction to deal with their grievances. We find substance in the aforesaid contention of the learned counsel for the applicant that the Tribunal has the jurisdiction to deal with this Application." This OA was subject of an SLP filed by the applicants in that OA in regard to the Tribunal's rejection of their claim on the ground of limitation. The Hon'ble Supreme Court vide its order dated 9.11.92 granted ~~granted~~ Special Leave with the order, "to put the issue beyond the pale of doubt, we set aside the impugned order and remit the matter to the Tribunal for disposal on merits. Should the Tribunal come to the conclusion that the grievance made by the appellant is well-founded, it will permit arrears for the period commencing from one month before filing of the application and subsequent thereto but not prior thereto." This order of the Hon'ble Supreme Court was passed on the submissions of the learned Additional Solicitor General of India who is reported very fairly to have stated that the impugned order of the Tribunal may be set aside and the matter may be remitted to the Tribunal for disposal on merits. Shri Altaf Ahmed, learned Addl. Solicitor General had not at that time brought to the notice of the Hon'ble Supreme Court that the Tribunal acted beyond its jurisdiction by deciding that the canceen employees were covered by the Administrative Tribunals Act for adjudication of their grievances. Then, Shri Kaushik also referred to the Division Bench order of the Bombay Bench in the OA No. 494/92 decided on 9.2.94 wherein the plea of non jurisdiction over the regimental fund paid employees in the N.D.A. Khadagvala was canvassed

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and that plea was negatived by the said Division Bench by a very detailed and exhaustive judgment and order. Shri Kaushik, therefore, concluded the submission that the applicants were very much covered by the Administrative Tribunals Act being holders of posts connected with defence.

13. The learned counsel for the respondents, Shri P.P. Chaudhary, reiterated his earlier arguments of the Tribunal not having the jurisdiction in the matter. He, on a previous date of hearing, had stated that there was a reasoned Supreme Court judgment wherein the jurisdiction of the Tribunal was barred in regard to certain categories of employees in the Defence installation. During the arguments, he referred to the case reported at 1992(3) SLR 117 - Union of India & Ors. Vs. Shri Tejram Parashramji Bombhate & Ors. wherein the Hon'ble Supreme Court had decided that "the Secondary School run by local arrangement made by the officers of the ordnance factory cannot be said to have anything to do with the Central Govt. The respondents in that School were not paid by the Central Govt. They were not holding any appointment under the Central Govt. There is no relationship of master and servant. It is not proved that how the Central Govt. is accountable to such arrangement made by the local officers. In view of these the Hon'ble Apex Court held that Section 14 of the Administrative Tribunals Act, 1985 confers no jurisdiction, power and authority on the Tribunal to deal with the service matters of the employees like the respondents." He based his arguments on the basis of the Annexure R/1 which is a letter dated 10.2.95 from the Army Headquarters stating that all URCs are private undertakings of the Units and their funds are non-Government Funds. This Directorate

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or CSD Headquarterss has no administrative control over the civilian employees of URCs as they are employed under certain terms and conditions mutually settled between the Unit and the employees. The employees of these URCs are not Govt. servants and therefore this office has no control/jurisdiction over the service conditions of such employees." Viewed in context of this letter there was no master and servant relationship between the respondents and the applicants. Further, he again reiterated that the URCs were financed by the profits of the canteens and canteen being a private enterprise was wholly outside the jurisdiction of the Tribunal. He cited another case in regard to R. Radhakrishnan Vs. The Chief of Naval Staff and others reported at 1993(1)SLJ (CAT) 407 decided by the Ernakulam Bench of the Central Administrative Tribunal wherein a similar view has been held. However, Shri Chaudhary fairly conceded that even if the objection to the jurisdiction made by the respondents is not upheld by the Bench, the pleas regarding non exhaustion of departmental remedies could be taken into account and the OA be disposed of with the direction of looking into the representation of the applicants within a month of such representation being filed. He stated that the payments of the salaries have been made to the applicants and nothing has been with-held arbitrarily or irregularly. There have been shortages in the accounts rendered by the applicants and the applicants were served with notices asking them to reconcile the differences. They, instead of complying with those notices have rushed to the Tribunal for adjudication in the matter.

14. I have given serious considerations to the averments and arguments made by learned counsels of both the parties.

15. The first point to be decided is the maintainability of the OA on the grounds of jurisdiction of the Tribunal. Section 14(b)(iii) reads like the following:-

> "14. Jurisdiction, powers and authority of the Central Administrative Tribunal-
> (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-
>
> (a) x x x x
>
> (b) all service matters concerning-
>
> (i) x x x
>
> (ii) x x x
>
> (iii) A civilian (not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,
>
> and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Govt. of India or of any corporation (or society) owned or controlled by the Government."

The provisions of Section 14(b)(iii) speaks of a civilian appointed to any defence services or a post connected with defence which should take care of the employees in the Unit Run Canteens who are applicants in this case. As per Rule 2 of terms and conditions of Annexure A/1, all employees subject to the rules shall be classified as temporary employees for a period of 5 years after which they may be declared permanent employees. This provision of permanency has necessarily to be related to post. No-one can be made permanent

against the non existent post and, therefore, the unmistakable position which emerges is that the employees of the canteen are holding posts connected with the defence. The canteens are inevitably connected with the Unit which is indicated by the name Unit Run Canteens. A Unit is admittedly a part of defence structure and if an employee is holder of a post of of Unit Run Canteen, the Unit which is a part of the defence system cannot but be a holder of a post connected with defence. This problem can also be solved from other angle. The respondents have stated that the URC is a private undertaking of the Unit. What is the meaning of private undertaking in the context of a Govt. Defence Installation? Surely, private here does not mean something personal or one's own individual, not affecting the community, confidential, as given out as the meaning of this word in the Concise Oxford Dictionary, Seventh Edition. Private undertaking in this context means "kept or removed from public knowledge or observation, not open to the public." In this manner the only meaning derived out of a private undertaking is that a Unit Run Canteen is not open to public or the existence of this canteen is not of any public knowledge. This is a canteen solely for the benefit of the officers and other categories of staff connected with the Air Force and other attached defence organisation like NCC etc. Surely, private enterprise in the affairs of defence cannot be for any other purpose, but for the general use and benefit of the officers and other ranks of the Defence. This could not mean an enterprise or a work undertaken for the private benefit of the officers of a Unit or other ranks of the Unit.

In any case, to the best of my knowledge , a Govt. organisation is always a public undertaking and not a private undertaking. Even on the side of installation paid under the Defence Estimates, so far, I have personally not heard of Govt. or any Govt. functionary sponsoring a private undertaking. I am sure, that the Army Headquarters when they use the word "private undertaking", they use it in the same sense which I have explained above that the canteen is a private enterprise of the Defence organisation which is not open to the public and which is not supposed to be within the knowledge of the public.

16. The next question is whether a canteen's function is a non-Government function totally generated by itself. Apart from making a blank statement that the Unit Run Canteen's functions are non-Government functions, there has been no attempt to substantiate the statement. As would be known from the scheme of canteens run in the Railways or elsewhere, an initial capital for the canteen or the receipt money for the canteen is provided by the Administration concerned. Grants-in-aid and loans are also given from time to time for several items of supply and equipment. Since the respondents did not file any Defence Ministry scheme for setting up canteens at the Units and the parameters within which these are set up, it is difficult to state what is the composition of the initial funds for setting up the URCs. However, the applicants have brought to notice that the C.S.D. gave a subsidy of Rs. 7 lacs in the shape of quantity discount. This has not been controverted by the learned counsel for the respondents. Admittedly the C.S.D. is a separate department of the Govt. of

India fully funded by the Consolidated Fund of India and its employees are regular employees of the Govt. If that is so, any subsidy from the C.S.D. to the URCs would controvert the statement that the entire Canteen Fund is a non-Government Fund. While it has been stated that no Public Fund has been used for running of the canteens, no firm statement has been made anywhere that there has been no funding from other sources like the Regimental Fund, Army Welfare Fund etc. which are also partly funded by Govt. Fund. The composition of the Regimental Fund and its character has fully been discussed in the Division Bench judgment of the Bombay Bench in OA No. 454/92 which leaves no doubt that Regimental Fund is also a Public Fund and an employee under this Fund obtains the protection of Central Administrative Tribunal under Section 14 of the Administrative Tribunals Act, 1985. However, the point at issue is not whether an employee is paid by any fund totally controlled by the Govt. which is emphatically called the Govt. Fund or any other fund like the Regimental Fund where the participation of the Govt. is slightly less or nominal. The question relates to holder of post connected with defence. This substantial question has been answered by the two different Division Benches of this Tribunal and they both have pronounced that the Tribunal covers the employees like the canteen employees or the Dhobis paid by the Regimental Fund. The judgments rendered by the Hon'ble Supreme Court in the cases of M.M.R. Khan and L.I.C. (supra) settle the whole matter at rest. The non statutory recognised canteens are part and parcel of the establishment

to which they are attached and anybody working in those canteens has to be considered an employee of that organisation. Hence the Hon'ble Supreme Court held that canteen employees in the non statutory recognised canteens were on par with the other employees of Railways. So did the Hon'ble Supreme Court decide in the case of canteens though run by the contractors, to be owned by the L.I.C. and managed by the L.I.C. and, therefore, the employees were considered employees of the LIC. The URCs are managed by the officers of the unit controlled by the officers of the Unit and is run for the Unit and other attached defence installations. Hence it is an integral part of that Unit and the employees working in those URCs are employees of the Unit. It is a very trite statement to make that there is no master and servant relationship between Army Headquarters and the employees of the URCs. Decidedly, there is a master and servant relationship between the Unit Commander/ Station Commander and the employees of the URC.

17. The citations referred to by Shri Choudhary are of no avail as the case in regard to Shri Tejram Parashramji Bombhate was already within my knowledge as the same was discussed in the said judgement of Division Bench of the Bombay Bench. That case has no relevance to the present matter as the facts and circumstances of the Schools were entirely different from a URC. Similarly, the Eranakulam Bench's case decided on 18.2.92 is of no assistance with which I respectfully differ. I fully endorse the views taken by the two Division

Benches' judgements which have decided that the civilian employees of the Defence establishments and canteens are covered by the A.Ts Act. Though the canteens run by the Unit are not statutory canteens, these canteens have been established in the Army since a very long time as a part of welfare activities and for the well being of the officers and other ranks of the Army. Admittedly, such canteens are sanctioned by the superior Headquarters and recognised by the C.S.D. which is the nodal department for canteen management in the Army. Once a non-statutory recognised canteen has been established, the Rules operating for the statutory canteens have to be applied as has been decided by the Hon'ble Supreme Court in the cases of Railways canteens and LIC canteens. Accordingly, I hold that the applicants are covered by the provisions of A.Ts Act, 1985, and are within the jurisdiction of this Tribunal.

18. I, however, concede the point made by the learned counsel for the respondents that the applicants have not exhausted the available remedies to them under the terms and conditions of their employment. They should have approached their appointing authority failing which they should have gone to the appellate authority for redressal of their grievances and should have waited for their reply to the representation before filing this OA. Since they were apprehensive of the attitude of the respondents, they rushed to the Tribunal for seeking immediate relief in regard to their livelihood as

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the monthly wages were not being paid to them. This Tribunal in exercise of the extra-ordinary powers under Article 226 of the Constitution, granted them an interim relief directing the respondents to make payment of their wages upto 50 % so that they could keep their body and soul together and recover whatever amount due from them as damages after proper enquiry. Shri Choudhary has also made a statement that the salaries of the applicants are being paid to them and no undue recovery has been made. Thus, no extra-ordinary situation has arisen for the intervention of this Tribunal at this stage.

ORDER

19. The OA succeeds partially. The applicants are covered by the ATs Act, 1985, and have the fullest justification of approaching this Tribunal for redressal of their grievances. However, they can do so only after exhausting all the remedies available to them under the Service Rules prescribed for them. The OA is disposed of with the direction that the respondents shall dispose of their representations, if made, hereafter within a month of their filing the same and will also ensure that their due wages are paid regularly. The applicants, if not satisfied with the disposal of the representation, shall have the liberty to approach this Tribunal for adjudication in the matter.

No order as to costs.

(N.K. VERMA)
MEMBER (A)

MS/cvr.