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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 12.10.2001

1. **O.A. No. 184/1996.**

Virender Kumar Verma S/o Late Shri Bhagat Ram Verma, aged about 36 years, resident of C/o Sh. Ramesh Aboti, behind Ganesh Ji-Ka-Temple Bhatia Chorchaya, Ratanada, Jodhpur, Last employed on the post of Asstt. Manager/Store Keeper in Unit Canteen Station Headquarter. Gwalior (MP).

... Applicant.

v e r s u s

1. Union of India through its Secretary to G/I Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Commandant, Station Headquarter, Gwalior (MP).

3. The Chairman, Unit Canteen, Station Headquarter, Gwalior (MP).

4. The Left. Colonel Y S Gulia, Canteen Officer, Unit Canteen, Station Headquarter, Gwalior.

... Respondents.

2. **O.A. No. 183/1996.**

Baljeet Singh Balhara S/o Sh. Chhotu Ram, aged about 40 years, Resident of House No. 135, Subhash Chowk, Ratnada, Jodhpur, last employed on the post of Salesman-cum-Cashier in NCC Group Headquarter Canteen, Rohtak (Haryana).

... Applicant.

v e r s u s

1. Union of India through its Secretary to G/I Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Chairman-cum-Group Captain, CSD Canteen, NCC Group Headquarter, Nuppi Niwas Model Town Rohtak.

... Respondents.

3. **O.A. No. 182/1996.**

Narendra Singh Rana S/o Sh. Kapoor Singh, aged about 40 years, Resident of House No. 135, Subhash Chowak, Ratanada Jodhpur last employed on the post of Salesman-cum-Cashier in NCC Group Headquarter Canteen, Rohtak (Haryana).

... Applicant.

versus

1. Union of India through its Secretary to G/I Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Chairman-cum-Group Commandar, C.S.D. Canteen N.C.C. Group Headquarter, Nuppi Niwas Model Town, Rohtak.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicants in all OAs.
Mr. Sanjay Dwivedi, Counsel for the respondents in OA No. 184/96.
Mr. Kuldeep Mathur, Adv., Brief holder for Mr. Ravi Bhansali, Counsel for the respondents in OA Noi. 183/96.
Mr. S.K. Vyas, Counsel for the respondents in OA No. 182/96.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

In all these applications, common questions of facts and law arise, hence we are disposing of all these OAs by this common judgement.

2. In O.A. No. 184/96, the applicant Shri Virendra Kumar has challenged his termination order dated 29.09.95 (Annexure A/1) and

order dated 17.10.95 (Annexure A/2) respectively. He has also challenged the Para 26 (b) of Standing Operating Procedure (SOP, for short) as being violative of Articles 14 and 16 of the Constitution.

3. In O.A. No. 183/96, the applicant Shri Baljeet Singh has challenged his termination order dated 03.06.95 (Annexure A/1) and he has also challenged the Para 17 of the Standing Order dated 16.06.86 (Annexure A/2), as being ultra vires of Articles of 14 and 21 of the Constitution.

4. In O.A. No. 182/96, the applicant Narendra Singh Rana, likewise has challenged his order of termination dated 30.05.95 (Annexure A/1) and the order dated 31.05.95 (Annexure A/2) by which the applicant's mercy petition regarding cancellation of termination order, has been rejected. He has also challenged Para 17 of the Standing Order dated 16.06.86 (Annexure A/3) as being ultra vires of Articles 14 and 21 of the Constitution. Thus, it is clear that the applicants have challenged their respective termination orders and they they have also challenged the Para 26 (b) of SOP and Para 17 of the Standing Orders under which the impugned termination orders are issued by the respective departments.

5. Their principle contentions are that the impugned termination orders are illegal inasmuch as they are issued without any notice and opportunities to the applicants. Their further contention in O.A. No. 182/96 and 183/96 is that the impugned orders being stigmatic, could not have been passed without holding an enquiry. At any rate, Para 17 of the Standing Order vide Annexure A/3 (in OA Nos. 182/96 and 183/96), providing termination of an employee after giving 30 days notice or without such notice on payment of pay for a period of 30 days, is violative of Articles 14 and 21 of the Constitution, and also as per

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the law declared by Hon'ble the Supreme Court in 1991 (1) SLJ (SC) 56 [Delhi Transport Corporation vs. D.T.C Mazdoor Congress & Ors.].

6. By filing reply, the respondents have denied the case of the applicants. They have raised preliminary objections that these applications are not maintainable before this Tribunal. They have stated that the applicant Shri Virendra Kumar Verma in OA No. 184/96, as per the averment made in the OA, was working as Store Keeper in Unit Canteen Station Headquarter, Gwalior (Madhya Pradesh). He had challenged the impugned order of termination dated 29.09.95 (Anexure A/1) before the Hon'ble High Court of Madhya Pradesh, Bench at Gwalior. It appears that the High Court directed the authorities to pass a fresh order after giving an opportunity. Thereafter, order Annexure A/2 dated 17.10.95 was passed by terminating the services of the applicant with effect from 30th October, 1995. This order also the applicant has challenged before Hon'ble the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior, in Writ Petition No. 1741 of 1995. The High Court of Madhya Pradesh dismissed the said writ petition No. 1741/96 filed by the applicant Shri Virenedra Kumar Verma, vide judgement and order dated 08.01.1996. Against the said order of Hon'ble the High Court, the applicant without approaching Hon'ble the Supreme Court, has filed this present OA (OA No. 184/96) on 21.05.96 before this Tribunal falsely alleging that he has been residing at Jodhpur, only because this Tribunal had held in OA No. 157/93 [Rajendra Jagarwal & Others vs Union of India and Ors.], that such employee in the Unit Run Canteens is a Government employees, and this Tribunal has jurisdiction. The respondents have stated that the applicant has given false address as if he is residing at Jodhpur. But in fact, before his termination, he was residing at Ward No. 23, Halka No. 963, Gurdwara Santar, Morar, Gwalior. His averment that he is residing at Jodhpur has been made with mala fide intention to invoke the territorial jurisdiction of this

Tribunal. Since the applicant is not residing at Jodhpur, his application is liable to be dismissed on the ground that the subject matter of the O.A. is not within the territorial jurisdiction of this Tribunal. Therefore, the application No. 184/96 is liable to be rejected.

7. Even in O.A. Nos. 182/96 and 183/96, the respondents have specifically stated in the reply that these 2 applications have been filed before this Tribunal, only because Hon'ble the Punjab and Haryana High Court, Chandigarh, vide its judgement and order dated 31.10.95 in Civil Writ Petition No. 12654 of 1993 [Sarasamma vs. Union of India & Ors.], had held that the Canteen is not an instrumentality of the State, and not an authority under Article 12 of the Constitution of India. Therefore, instead of filing the OAs before the Central Administrative Tribunal, Chandigarh Bench, the applicants in these 2 applications, have approached this Tribunal as if they are residing at Jodhpur, and in fact, these applicants are also not residing at Jodhpur. The respondents have specifically stated in the reply that the applicant in OA No. 182/96 is the resident of village Paksama, and his name was found in the voter's list at sl. No. 697 in Part No. 56. Even he has been issued voter's identity card No. 165796 in village Paksama, which falls within Hasangarh Constituency of Haryana Assembly. The copy of such list is filed at Annexure R/1. It is also stated that the applicant is also having his ration card at Paksama Village. Therefore, his contention that he is residing at Jodhpur, is totally false and unture.

8. In respect of applicant Shri Baljeet Singh Balhara in O.A. No. 183/96 also, the respondents have clearly stated that the applican has not been residing at Jodhpur. The applicant was employed in th Unit Run Canteen situated in Rohtak town of State of Haryana. He ha

been residing in Rohtak town, Opposite House No. 188-L, Model Town, Rohtak. In the Voter's list, his name is placed at sl. No. 11 in Part No. 151, and he has been issued voter's identity card No. 450011 of Rohtak Constituency of Haryana Assembly. Such list is filed at Annexure R/1. Therefore, he is a resident of Rohtak, Haryana State. It is also stated that he is having the ration card at the above address. The respondents also stated that the applicants have given their address as "House No. 135, Subhash Chowk, Ratanada, Jodhpur" falsely by concealing the material facts, and by making misstatement before this Tribunal. Therefore, these 2 applications are also liable to be dismissed on this ground only, without going into the merits of the case. Even on merit, the respondents have denied the case of the applicants in OA Nos. 182/96, 183/96 and 184/96. The learned counsel for the respondents vehemently argued as to the territorial jurisdiction as well as on merits, with reference to the judgements of Hon'ble the Supreme Court. But in our considered opinion, this Tribunal would go into the merits involved in all cases, provided we are having territorial jurisdiction. Having regard to these circumstances, we think it appropriate to take up preliminary objection raised by the respondents as to the territorial jurisdiction.

9. The learned counsel for the applicant strenuously relied upon the Rule 6 (2) of the Central Administrative Tribunal (Procedure) Rules, 1987 [the Rules, for short]. For immediate reference, we think it appropriate to extrat the Rule 6 of the Rules, as under:-

> "**6. Place of filing application.**- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -
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> (i) the applicant is posted for the time being, or
> (ii) the cause of action, wholly or in part, has arisen:
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> Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the

matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

From reading of the above Rule, we find that an application shall ordinarily be filed before the Bench, where the applicant is posted, or where the cause of action wholly or partly arises. Under clause (2) of the Rules, the persons who have ceased to be in service by reason of retiement, dismissal or termination of service, may at their option file an application before the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

10. Keeping in view the above Rule, we will now examine the contentions of both the parties.

11. It is an admitted fact that the impugned orders vide Annexures A/1 and A/2 in respect of applicant Shri Virender Kumar Verma in O.A. No. 184/96, are passed at Station Headquarters, Gwalior (Madhya Pradesh). In fact, the applicant had challenged these very orders before Hon'ble Madhya Pradesh High Court, Bench at Gwalior, as we have noted above, unsuccessfully. Vide its order dated 08.01.96, the writ petition No. 1741 of 1995 filed by the applicant against the order dated 17.10.95, has been dismissed by the Hon'ble Madhya Pradesh High Court. The authorities who passed the impugned orders were residing within the jurisdiction of Madhya Pradesh High Court. Therefore, it cannot be said that the cause of action or a part of cause of action arose in the State of Rajasthan. Likewise, in OA Nos. 182/96 and 183/96, the impugned orders have passed by the authorities in NCC Group Headquarters, Rohtak, which falls within the jurisdiction of Punjab and Haryana High Court at Chandigarh. Having noticed the law

declared by Hon'ble the Punjab and Haryana High Court that no writ petition was maintainable against such authorities, who were not an instrumentality of the State under Article 12 of the Constitution, they have approached this Tribunal. By going through the Annexure R/1 voter's list, voter's identity card etc., it is clear that the applicants were the permanent residents of the State of Haryana. By relying on these records, the respondents have vehemently argued that the applicants have given the address at Jodhpur falsely, only to invoke the territorial jurisdiction of this Tribunal. They have specifically stated that since this Tribunal has held in the case of Rajendra Jagarwal & Ors. in O.A. No. 157/93, that such canteen employee in the Unit Run Canteens is a Government servant, and this Tribunal has jurisdiction, the applicants also have approached this Tribunal to take the benefit of that judgement at the hands of this Tribunal. The applicants in OA No. 182/96 and 183/96 have given common address as "House No. 135, Subhash Chowk, Ratanada, Jodhpur". But the respondents have denied that these applicants are residing at that address. The applicant in OA No. 184/96 has given his address as "C/o. Shri Ramesh Aboti, Behind Ganesh Ji-Ka Temple, Bhatia Chorahaya, Ratanada, Jodhpur. The respondents have clearly stated that this applicant is also not residing at that particular address.

12. As per Rule 6 of the Rules, in case of an employee, who retired or dismissed or terminated from service, may file an application under the said Rules before the Bench within whose jurisdiction, such person is ordinarily residing at the time of filing of such application. The term 'ordinarily residing' would indicate that such persons who should reside with an intention to permanently settle down in that particular place. The person coming over to Jodhpur in Rajasthan as a tourist or some business purposes or for filing these OAs, cannot be said to be ordinarily residing in Rajasthan. He should necessarily have an

intention to permenantly reside here in Jodhpur and the fact that his residence also must be here in Jodhpur. Such a residence should be similar to one so as to acquire domicile in that particular place. Though no judgement or authority has been brought to our notice by either side as to the nature of residence required under the said clause (2) of the Rule 6 of the Rules, but we have sought support from the principle contemplated under Article 5 of the Constitution of India. Article 5 (c) of the Constitution also provides that every person who has his domicile in 'territory of India', and who has been ordinarily residing within the 'territory of India' for not less than 5 years immediately preceding the commencement of the Constitution.

13. Shri Durga Das Basu in his book "Shorter Constitution of India" (Thirteenth Edition 2001), commenting on the Article 5 of the Constitution on the basis of the judgements of Hon'ble High Courts and Hon'ble the Supreme Court, explained the concept of "**Domicile**" and "**Ordinarily resident**". He has explained "**Domicile**" as under:-

> "**Domicile.-** Domicile means the place where a person's habitation is fixed without any present intention of moving therefrom. Mere residence is not enough.
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> Every person has a domicile at his birth called the domicile of origin. This continues until he acquires a new domicile.
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> The domicile of origin cannot be changed until the person acquires a new domicile animo et facto, i.e., by actually settling in another country with the intention of permanently residing there. Till then the domicile of origin continues notwithstanding the fact that he has left the country of his origin with an intention of never returning again. The onus to prove that a person has changed his domicile of origin lies upon him. For this purpose, the course of his conduct both before and after the material time is relevant."

From the above statement of law, it is clear that the burden is on the person to prove that such person has changed his domicile of origin, and for this purpose, the course of his conduct both before and after the material time is relevant.

14. Regarding the concept "**Ordinarily resident**" found under clause (c) of the Article 5 of the Constitution, Shri Durga Das Basu says as under:-

> "**Ordinarily resident**".- In order to be ordinarily resident of India for the specified period, it is not necessary that the person should have resided in India for every day of this period; what is required is residence during the period without any serious break."

From this explanation of 'Ordinarily resident', it is clear that such residence during this period should be without any serious break. But as per the facts on hand, it is clear that the applicant in OA No. 184/96 was residing at Gwalior, and he had challenged the impugned orders before Hon'ble High Court of Madhya Pradesh unsuccessfully. The judgement of Hon'ble High Court, by which his writ petition No. 1741 of 1995 was dismissed vide Annexure R/5, is dated 08.01.96. Therefore, to prove the allegations of the applicant in OA No. 184/96 that he has changed his residence to Jodhpur so as to file this O.A. on 09.04.97, he has to produce some documentary evidence, in view of the specific contention raised by the respondents that he has given false address at Jodhpur with mala fide intention, so as to invoke the jurisdiction of this Tribunal. The applicant has not produced any iota of documents, like voter's list, voter's identity card or ration card etc., to prove that he has changed his residence from Madhya Pradesh to Rajasthan. Likewise, the contention of the applicants in OA Nos. 182/96 and 183/96 is that both of them are residing at the common address at "House No. 135, Subhash Chowk, Ratanada, Jodhpur" is not true. As per Annexure R/1 (voter's list) produced in the respective cases clearly indicate that they were residing in the State of Haryana. They have presented these 2 applications in the month of April, 1997. In view of the categorical statements by the respondents that these two applicants have also not been residing in Jodhpur, the applicants have not produced any iota of evidence, except their self serving affidavit.

Moreover, under Section 114 of the Law of Evidence, under the illustration (d), it provides that "a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;". In other words, this illustration provides for a presumption that a particular fact shown to have existed, continued to exist so. Commenting upon the illustration (d) of Section 114 S/Shri Ratanlal and Dhirajlal in their book of 'The Law of Evidence', 18th Edition 1992, have stated as under :-

> " **Illustration (d)- Continuity of things.-** This illustration is founded on the presumption which exists in favour of continuance or immutability.
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> If a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn. The rule that the presumption of continuance may operate retrospectively also has been recognised in India. How far the presumption may be drawn backwards and forwards depends upon the nature of the thing and surrounding circumstances."

15. Applying this principle also, we find that within a proximate of time, the applicant in OA No. 184/96, was residing at Gwalior in Madhya Pradesh, and the applicants in OA Nos. 183/96 and 182/96, were residing at Rohtak and Paksama in Haryana State. Therefore, their contention that they are residing in Jodhpur is not tenable, unless they establish that they have been infact, residing at Jodhpur. They have not produced any documentary evidence for rebutting such allegation. The allegations made in the applications and the replies would be an instance of oath against oath, and in these circumstances, the applicants should have produced some documentary evidence, like ration card, voter's list or voter's identification card etc., to rebut such allegations, and also to prove that in fact, they are ordinarily the residents of Jodhpur, in terms of Rule 6(2) of the Rules, and that they have not done. In view of this, we are constrained to hold that they have given false address with mala fide intention, so as to take

advantage of the judgement and order of this Tribunal passed in OA No.157/1993 (Supra), holding that such canteen employee in the Unit Run Canteens, is a Government servant and this Tribunal has jurisdiction. At the same time, Hon'ble High Court of Punjab and Haryana held that such employees working in the Unit Run Canteens are not Government servants. Thus, it is clear that only to take benefit of the judgment of this Tribunal passed in Rajendra Jagarwal's case (OA N. 157/93), they have filed the present OAs by falsely claiming that they are residents of Jodhpur. In this view of the matter, we hold that the applicants, in all these applications, have not ordinarily been residing within the jurisdiction of this Tribunal, and this Tribunal has no jurisdiction to entertain thess applications, and as such these applications are liable to be dismissed. Since we have come to the conclusion that this Tribunal has no jurisdiction, it is not necessary for us to consider the contentions urged on both sides on merits of the case. Accordingly, we pass the order as under :-

> "These Original Applications No. 184/96, 183/96 and 182/96 are dismissed as not maintainable. If the applicants desire to present these applications before any other competent Court, and if they file an application to that effect, the office is directed to return the papers to them. No costs."

(A.P. NAGRATH)
Adm. Member

(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.

Part II and III destroyed
In my presence on 22.5.07
under the supervision of
section officer ( ) as per
order dated 13/5/07

Section officer (Record)

R/Copy
at 22 IX

R/ original file alongwith
Annex. & Extra set
19/11/01

Copy Order sent to R-1
vide no 528 dt 24/12/2001

AD Rana with
Singh
28/11/02