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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 121/2008

Date of decision: 9th November, 2010.

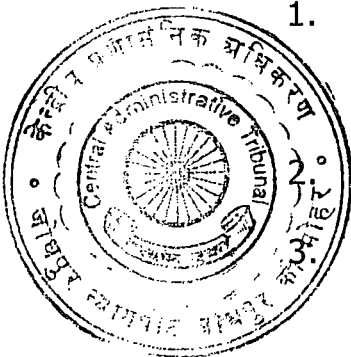
**CORAM: HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Narain Dass Sindhi son of Shri Rewa Chand, aged 39 years, Tea & Coffee Maker, Head Post Office, Bhilwara, R/o 4 H 7 New Housing Board, Shastri Nagar, Bhilwara.

: Applicant.

Rep. By Mr. Vijay Mehta , Counsel for the applicant.

Versus



1. Union of India through the Secretary to the Government, Ministry of Communication (Dept of Posts), Sanchar Bhawan, New Delhi.

Post Master General Southern Region, Ajmer
Superintendent of Post Offices, Bhilwara.

: Respondents.

Rep. By Mr. M. Godara proxy for Mr. Vinit Mathur, Counsel for the respondents.

ORDER

Per Mr. Sudhir Kumar, Member (A)

The applicant in this case is a Tea/Coffee maker engaged to manage the Tiffin Room (Canteen), Bhilwara Head Post Office. The case of the applicant is that the Tiffin Room was open on 1st March, 1982, and was being run entirely by subsidy given by the Postal Department to cater to the needs of the staff consisting of 150 pu.

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Postal employees. The applicant claims to have been appointed on 23.5.1989. His further claim is that he was appointed in a proper manner and on regular basis and was working as permanent employee of the said Departmental Tiffin Room (Canteen). He submitted that his initial engagement w.e.f. 1.8.1993 itself was in the pay scale of Rs. 750-940/- and he remained continuously in service after his initial engagement w.e.f. 23.5.1989. The applicant has cited the appointment order dated 23.2.1994 (Annexure A/3) and the order of confirmation dated 24.11.1997 (Annexure A/4) as proof of his engagement in the said Departmental Canteen.

2. The applicant is before us armed with the Government of India, (DOPT) O.M. dated 20.3.1997 (Annexure A/5), through which, in terms of the orders of the Central Administrative Tribunal, Ernakulam Bench, and in terms of the order of the Hon'ble Apex Court in M.M.R. Khan's case and the case of C.K. Jha and Ors. (Writ Petition No. 6189-7044 and 8246-55) through Judgment dated 11.10.1991, the facility of regularization of service was extended to the employees working in the Departmental Canteens/Tiffin Rooms. Through this O.M. the Govt. of India had decided that in obedience of the order of the Supreme Court and Central Administrative Tribunal, Ernakulam Bench, all Departmental canteens which were opened before 1.10.1991, but could not be registered by the cut-off date due to various reasons, be allowed to continue to function as before, and that the employees working in such Departmental canteens will also

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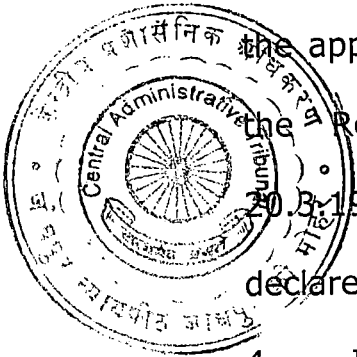
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be declared as Government employees w.e.f. 1.10.1991, subject to following conditions:-

- i) That the Canteen/Tiffin Room was set up by departmental authorities before 1st October, 1991; and
- ii) That the employees in the Canteen/Tiffin Room were recruited in a proper manner and such recruitment was made on a regular basis.

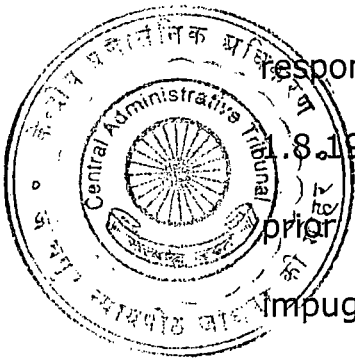
3. The claim of the applicant is that the Tiffin Room at the Head Post Office at Bhilwara was in existence and working there since 1.3.1982, much before the designated date of 1.10.1991. Though the Secretary of the Tiffin Room had sent an application for registration to the Directorate of Canteens only on 22.12.1992 (Annexure A/8), the applicant submitted a detailed representation (Annexure A/9) to the Respondent No.3 much after the issuance of this O.M. dated 20.3.1997 cited by the applicant, on 14.10.2004, requesting to declare him as a Govt. servant w.e.f. 1.10.1991.

4. It may be noted here that the respondents have already accepted the applicant to be a regular employee w.e.f. 1.8.1993, and the whole issue is of backdating this date by 22 months, to 1.10.1991, in accordance with the DOPT O.M. cited above. The applicant is aggrieved that all the records of the Tiffin Room Canteen are available with the respondent authorities, but yet they have not bothered to verify the same by checking the payment of subsidies and the salary paid to the applicant during that relevant period. RM.



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5. The applicant has approached this Tribunal on the ground that the only requirement to declare such employee as Govt. servant from 1.10.1991 is that the Tiffin Room should have been set up before 1.10.1991, and further that the recruitment should have been made in proper manner. His submission was that the respondents have not denied that the Tiffin Room was in existence before 1.10.1991, and that the applicant was appointed in a proper manner. He had taken a further ground that the respondents have granted similar benefit to similarly situated set of employees, but have denied the same to him, which has resulted in a miscarriage of justice, as the applicant was the only employee in the Tiffin Room since his appointment dated 23.5.1989. He has taken a further ground that it is incorrect for the respondents to state that the Tiffin Room was sanctioned on 1.8.1993, and it was very much in existence for more than 10 years prior to that since 1.3.1983. He had, therefore, prayed that the impugned orders passed by Respondent No.2 (Annexure A/1) be quashed and set aside, and for further direction to respondents to declare the applicant to be a Govt. servant w.e.f. 1.10.1991 with all consequential benefits. He made a further related prayer for grant of Advance Career Progression (ACP) benefits by counting 12 years of his service from 1.10.1991 onwards.



6. In the written statement respondents pleaded that the he applicant had not ~~come~~ come before this Tribunal with clean hands as he the Annexure A/2 submitted by him was not a true copy, inasmuch he.

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as the word temporary in Hindi had been typed in the last but one line to show as if his appointment was permanent. While admitting that as a welfare measure, one Tiffin Room was functioning at Bhilwara Head Post Office since 1.3.1982, and a monthly subsidy of Rs. 750/- was sanctioned, they pleaded that consequent upon the Judgment of Hon'ble Supreme Court of India, the Tiffin room was ordered to be treated as a departmental canteen only from 1.8.1993, with a proper registration number, from which date only the post occupied by the applicant was created within the department. They further submitted that through memo dated 23.2.1994, the applicant had been given substantive appointment in the appropriate pay scale w.e.f. 1.8.1993. They submitted that prior to the said date, the applicant was simply temporarily engaged by the Secretary of the Managing Committee of the Tiffin Room as per the minutes dated 23.5.1989, and that he was not regularly appointed/recruited in a proper manner from any date prior to 1.8.1993. As such, they submitted that since the applicant was not recruited in a proper manner and on regular basis by the Department prior to 1.10.1991, he is not eligible for regularization from that date. It was pointed out that the applicant had submitted a representation to the Directorate of Postal Services, Rajasthan Southern Region, Ajmer, for declaring him to be a regular departmental employee w.e.f. 1.10.1991, and granting him ACP benefit from 1.10.1993, which was forwarded to the competent



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authority, was considered by it, and rejected on 13.3.2008, since the Tiffin room had not been sanctioned, and the Departmental Canteen was sanctioned only w.e.f. 1.8.1993, and there was no service record found in the Department to prove the regular working of the applicant prior to 1.8.1993. Aggrieved by that order, the applicant has come before us in this O.A.

7. The respondents further submitted that the functioning of the Tiffin Room opened on 1.3.1982 was purely on the basis of payment of subsidy, and the Secretary of the Tiffin Room had to manage its working on monthly basis by engaging a person, and that though the applicant was appointed by the Managing Committee of that Committee on temporary basis (according to the minutes of the meeting held on 23.5.1989), but neither was he appointed on a regular basis, and nor was he recruited after following the prescribed procedure. They submitted that the applicant's representations have been considered properly. They further clarified the case concerning some other people, whom the applicant had claimed to be similarly situated, was different, and submitted that the applicant's case cannot be compared with those other officials. In the result, the respondents submitted that none of the grounds raised by the applicant are sustainable in the eyes of law, and therefore the O.A. deserves to be dismissed.

8. Applicant chose to file a rejoinder, more or less reiterating his submissions in the O.A. He denied having tampered with any record Rx.



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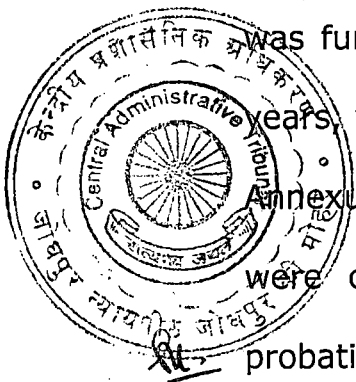
while typing out the Annexure A/2. He also submitted that he was appointed by the Managing Committee of the Tiffin Room, the President whereof was the Post Master himself, and, therefore, he denied the contention of the respondents that he was not appointed in a proper manner, in accordance with the proper procedure, and on regular basis. He further submitted that Annexure A/5 makes it clear that the Tiffin Room which was opened before 1.10.1991 could not be registered by the cut off date shall be allowed to continue as before, and that the employees there are also declared as Govt. employees from 1.10.1991. He alleged discrimination as compared to other employees, whose cases were already treated to have been regularized w.e.f. 1.10.1991. He, therefore, prayed for O.A. to be allowed with costs.



Additional affidavit was also filed by the respondents pointing out that since the last line of Annexure A/2 already reads to the effect that "the decision for regular or permanent appointment will be taken in the next meeting of General Assembly" of the Tiffin Room Society, it was clear that the applicant could not have been appointed on a permanent basis, and the decision for permanent appointment had been left to be taken at the next meeting of the General Assembly. It was submitted that applicant is trying to mislead this Tribunal, and that his appointment prior to the creation of the departmental post (from 1.8.1993) was only a temporary appointment. he

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10. We have given our anxious consideration to the facts of the case, and we find that it is nowhere evident that a regular process of recruitment or selection had been undertaken before the decision was taken on 23.5.1989 by the Managing Committee of the Tiffin Room to engage the applicant on temporary basis, clearly stating that a decision in regard to regular or permanent appointment will be taken in the next meeting of the General Assembly. Annexure A-3 also shows that the applicant's engagement w.e.f. 1.8.1993 also was purely on temporary basis, and terminable at any time by giving a month's notice by the appointing authority without assigning any reason, or payment of remuneration in lieu of the period of notice. It was further noted that he would be on probation for a period of 2 years, which probation was declared to have been completed through Annexure A/4 dated 24.11.1997, whereby the applicant's services were confirmed w.e.f. 1.8.1995 after his having completed the probation period satisfactorily.



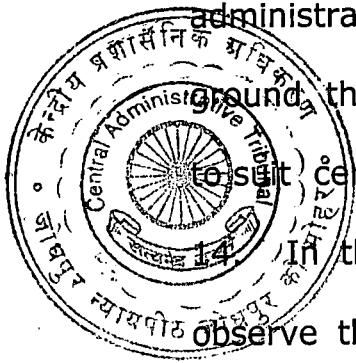
11. In the case of **Principal, Mehar Chand Polytechnic & Another Vs. Anu Lamba and Ors. (2006) 7 SCC 161** it was observed by the Hon'ble Supreme Court that although the State is a model employer, its right to create posts and recruit people therefore emanates from the statutes or statutory rules; and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The Recruitment Rules are framed with a view to give equal

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opportunity to all the citizens of India entitled for being considered for recruitment to the vacant posts.

12. The above observations of the Hon'ble Supreme Court were again reiterated and affirmed by it in the Constitution Bench Judgment in **Secretary, State of Karnataka and Ors. Vs. Uma Devi and Ors. 2006(4) SCC (1).**

13. Further, in the case of **V.K. Sood Vs. Secretary, Civil Aviation and Ors. 1993 SCC (L&S) 907** the Hon'ble Supreme Court observed that; "laying down and prescribing through Rules Qualification in the matter of appointment is prerogative of the administrative authorities, and this right cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit certain individuals."



In the same Judgment, the Hon'ble Supreme Court went to observe that challenge on the ground of mala fides to the rules framed under proviso to Article 309 of the Constitution is not amenable to judicial review.

15. In the present case, there is no doubt that the applicant was engaged on temporary basis w.e.f. 23.5.1989 by the Managing Committee of the Tiffin Room, but it is clear that it was a stopgap arrangement, when the resignation of another Tiffin Boy had been accepted on that date, and that the same resolution stated that a decision regarding permanent appointment of a Tiffin Room Boy will be taken in the General Assembly meeting later. Thus, the applicant

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here cannot be allowed to plead that his appointment was made by following any proper procedure, or laid down rules and procedure, and by selecting him out of a number of applications called for, or after inviting applications, after duly notifying the vacancy, once the resignation of the previous incumbent Tiffin Room boy had been accepted.

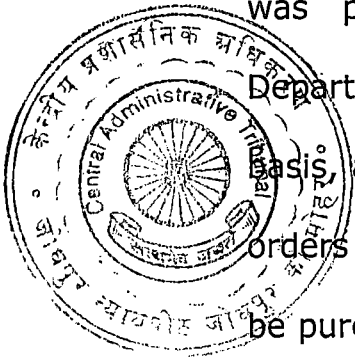
16. It is further clear that the departmental sanction for the creation of the Tiffin Room within the Department of Posts came into existence only from 1.8.1993.

17. Even through Annexure A/3, dated 23.2.1994, the applicant was properly and duly informed that he was appointed as Departmental Tea/Coffee maker w.e.f. 1.8.1993 purely on temporary basis, against the departmental post sanctioned from that date, vide orders of the CPMG dated 18.10.1993, and that his appointment will be purely temporary, and that he was to be on probation for a period

of 2 years, and that his services could be terminated at any time by a month's notice given by the appointing authority without assigning any reason. His order of confirmation was also issued through

Annexure A/4 dated 24.11.1997. Having accepted his substantive appointment w.e.f. 1.8.1993, his probation for a period of 2 years, and his subsequent confirmation w.e.f. 1.8.1995, through Annexure

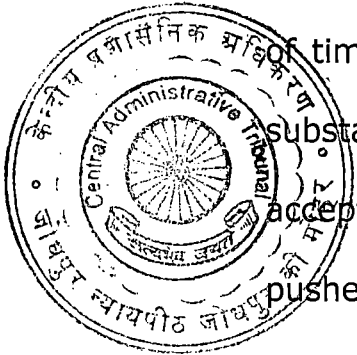
A/4 dated 24.11.1997, the applicant cannot now be allowed to put the clock back, and to make submissions which he ought to have made then, since he was in the know of Annexure A/3 dated



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23.2.1994, or even when the order of his confirmation w.e.f. 1.8.1995 was issued on 24.11.1997.

18. By applying the legal principle of acquiescence, it is clear that the applicant had in the year 1994, and again in the year 1997, accepted the fact that his substantive appointment on probation was w.e.f. 1.8.1993, and his confirmation was w.e.f. 1.8.1995. If the applicant had any grievance against his date of substantive appointment w.e.f. 1.8.1993, or his subsequent confirmation w.e.f. 1.8.1995, the applicant ought to have approached the departmental authorities, and in case of non redressal of his grievance, this Tribunal also, in the year 1995 and 1997 itself. Today, at this length of time, the applicant cannot be allowed to plead that his date of substantive appointment and confirmation, which he had then accepted in the year 1994 and 1997 respectively, should now be pushed back to 1.10.1991.



19. In the result, the O.A. fails, with no order as to costs.


(SUDHIR KUMAR)
MEMBER(A)


[JUSTICE S.M.M. ALAM]
MEMBER (J)

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