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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.226/2010

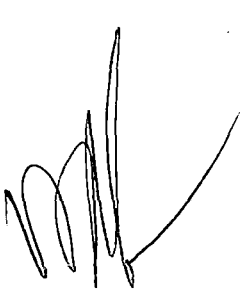
Date of decision: 31-10-2012

Reserved on 04.09.2012

CORAM

HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

1. B.K. Gaur S/o Shri Ram Chander Gaur, aged about 52 years, at present employed as Billing Clerk-cum-Cashier (designated as Sales Man-cum-Accounts Clerk).
 2. Ashok Kumar S/o Late Shri Mukan Lal, aged about 48 years, at present employed as Ledger Holder (designated as Sales Man cum Accounts Clerk).
 3. Mohd. Aslam S/o Shri Abdul Sattar, aged about 45 years, at present employed as Costly Counter Incharge (designated as Sales man cum Accounts Clerk).
 4. Jogdan S/o Shri Ved Dan, aged about 50 years, at present employed as Shop Stock I/C (designated as Sales man cum Accounts Clerk).
 5. Ladudan S/o Shri Nabu Dan Charan, aged about 52 years, at present employed as Shop stock I/C Liquor (designated as Sales man cum Accounts Clerk).
 6. M. Singh S/o Shri Raghuveer Singh, aged about 49 years, at present employed as Liquor Counter Incharge (designated as Sales man cum Accounts Clerk).
 7. Ramesh Aboti S/o Shri Jagdish Lal, aged about 49 years, at present employed as Ledger / Smart Card I/C (designated as Sales man cum Accounts Clerk).
 8. R.L. Gaur S/o Shri Teja Ram Gaur, aged about 49 years, at present employed on the Billing Clerk cum Cashier (designated as Sales man cum Accounts Clerk).
 9. Sanjay Kohli S/o Shri Dharamveer Kohli, aged about 42 years, at present employed on the Billing Clerk cum Cashier (designated as Sales man cum Accounts Clerk).
 10. S. Pillai S/o Shri Prabkhakaran Pillai N, aged about 42 years, at present employed as Bulk I/C, and Server I/C (designated as Sales man cum Accounts Clerk).
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11. D. Chaudhary S/o Shri Ram Swaroop, aged about 41 years, at present employed as Control Items I/C (designated as Sales man cum Accounts Clerk).
12. Mohd. Iqbal S/o Shri Abdul Sattar, aged about 42 years, at present employed on the Billing clerk cum Cashier (designated as Sales man cum Accounts Clerk).
13. D. Singh S/o Late Shri Dhan Singh, aged about 50 years, at present employed as Asst. Sales Man (designated as Watchman).
14. Prem Chand S/o Late Shri Jouri Lal, aged about 33 years, at present employed Safai Wala (designated as Safai Wala).

Office address:

Unit Run Canteen, No.32 Wing Air Force C/o 56 APO.

Address for Correspondence:

C/o Shri B.K. Gaur S/o Shri Ram Chander Gaur, R/o Fateh Sagar, Ramanujkot, Jodhpur.

.....Applicants**(By Advocate Mr. J.K.Mishra).****Vs.**

1. Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Quartermaster General's Branch, DY Dte Gen Canteen Services, Army Headquarters, L-Block Room No.16, Church Road, New Delhi.
3. Air Officer Commanding, No.32 Wing Air Force, C/o 56 APO.

...Respondents**Mr. Kuldeep Mathur, counsel for respondents.****ORDER****Per : Hon'ble Mr. B.K. Sinha, Administrative Member**

The instant OA is not made against any specific written order. Rather, the applicants have filed this application for fixation of pay at the minimum of or the revised scales under the Sixth Pay Commission (SPC) as admissible to the corresponding posts in



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CSDI as admissible under Terms and Conditions of the URC employees.

Reliefs sought

- (i) *That the applicant may be permitted to peruse this joint application on behalf of 18 applicants under rule 4 (5) of CAT Procedure Rule, 1987.*
- (ii) *That the respondents may be directed to grant appropriate revised pay scale and fix their pay w.e.f. 01.01.2006 as per their actual designations/ working post with due arrears as has been done in respect of their counterpart in CSD as contemplated in the terms and conditions of URC Employees. And any adverse order, if passed, on the notice for demand of justice, may be quashed and the applicants allowed with all consequential benefits including interest of the amount arrears.*
- (iii) *That the respondents may also be directed to designate the applicants as per the designations provided under the Terms and conditions for URC employees and assign work and make payment accordingly.*
- (iv) *That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (v) *That the costs of this application may be awarded."*

Case of the applicant

2. The instant OA has been instituted by the applicant, B.K. Gaur and 13 others. The applicants No.1 to 12 were admittedly appointed on the post of Salesman-cum-Accounts Clerk in Unit Run Canteen (hereinafter referred as URC) in 32 Wing Air Force, during the period from 1982 to 1984, while the applicant No.13 was appointed as Watchman in 1991 and applicant No.14 as Safaiwala in the year 2002. The applicants have discharged the following duties:-

Sl. No.	Name	Designation presently
1.	Sh.BK Gaur	Billing cum Cashier
2.	Sh. Ashok Kumar	Ledger Holder
3.	Md. Aslam	Costly Counter I/C
4.	Sh. Jogdan	Shop Stock I/C
5.	Sh. Ladudan	Shop Stock I/C Liquor
6.	Sh. M.Singh	Liquor Counter Incharge
7.	Sh.R Aboti	Ledger/ Smart Card I?C
8.	Sh. RL Gaur	Billing Cashier
9.	Sh.Sanjay Kohli	Billing cum Cashier
10.	Sh. S. Pillai	Bulk I/C, Server I/C
11.	Sh. D Chowdhary	Control Items I/C
12.	Md.Iqbal	Billing cum Cashier



13.	Sh.D Singh	Asst Sales Man
14.	Sh. Prem Chand	Safai Wala

3. The above applicants, except for applicant No.14, filed an OA titled as "**Rajendra Jagarwal and others vs. Union of India and others**" regarding grant of various service benefits to the applicant. This OA was allowed with a directive to the respondents to pay the salary and other benefits similar to those available to the Canteen Employees in the CSDI, the same benefits were to be extended to the non-applicants. This case was subsequently tagged with the case of **Union of India vs. Mohd. Aslam and Ors. etc**, which came to be decided by the common judgment as reported in AIR 2001 SC 526 = 2001 SCC (L&S) 302 = 2001 (1) SC SLJ 167, wherein the Hon'ble Supreme Court was pleased to direct that the employees of the Unit Run Canteens would draw at the minimum of a regular scale of pay available to their counterparts in the CSDI and further directed the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit Run Canteens at an early date, preferably within six months from the date of that order. Accordingly, the applicants in **Rajendra Jagarwal's case** (supra) were paid revised salary w.e.f. 01.01.1996. Further, the respondent organization issued a revised order/letter No.32W/2188/1/Can/Org dated 07.01.2002, the para 2 of the said letter reads as under:

"2. The pay scale for the post of Salesman cum Accounts Clerk, w.e.f. 01 Jan 96 was Rs.3050-75-3950-4590. The corresponding scale applicable for said post prior to 01 Jan 96 was Rs.950-20-1150-EB-25-Rs.1500 as per CSD scale."

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4. Accordingly, the pay of those Unit Run Canteens Employees below the minimum of designated classification's pay scale, is brought at par. It is here, however, that the troubles begin. The Sixth Central Pay Commission considered the Canteen Staff both of statutory and non statutory canteens in ministries like Railways and Defence as Government employee and directed **"The Fifth CPC had recommended a specific structure for the various posts existing in different canteens in Central Government. Many of the posts of the canteen staff are presently in Group 'D' scales of pay. As a result of the general recommendation made by the Commission for Group 'D' posts, all the posts of canteen staff in Group 'D' shall now be placed in the revised pay band PB-1 of Rs.4860-20200 along with grade pay of Rs.1800 once the staff occupying these posts is suitably retrained and made multi-skilled. Other posts of canteen staff in the pay scales of Rs.3050-4590, 3200-4900, Rs.4000-6000 and Rs.4500-7000 shall be extended the corresponding replacement pay bands and grade pay. The posts of canteen staff in the pre-revised pay scales of Rs.5000-8000 and Rs.5500-9000 shall stand merged in the pay band PB-2 of Rs.8700-34800 along with grade pay of Rs.4200."** The same recommendation has been given in respect of the respondent organization who are yet to get them implemented. The learned counsel for the applicant has submitted that the judgment in Mohd. Aslam's case (supra) has been made *per incuriam* and would continue to be binding amongst the parties. He further referred to the judgment of the **Union of**



India vs. Madras Telephone SC & ST Social Welfare Association, reported in (2007) 1 SCC (L&S) 35 and also to a decision of this very CAT in the case of **Ram Sukh Rana vs. Union of India** in OA No.150/2008 delivered on 13.01.2010. The learned Counsel for the applicants further referred to the case of **R.R.Pillai (dead) through LRS vs. Union of India**, Civil Appeal No.3495/2005 (old No.8586/2003) and submitted that it has not been delivered under Article 142 of the Constitution of India and as such is not applicable.

Case of the respondents

5. Learned Counsel for the respondents has submitted that it is wrong to assume that in the case of Mohd. Aslam (supra), the Hon'ble Supreme Court had made a declaration *carte blanche* that that employees of the Unit Run Canteens would be deemed to be Government employees. It would be dependent upon the nature of the duties discharged by them and the Rules, Regulations and Administrative instructions issued by their employees. This judgment further directed the Union of India to determine the service conditions of the employees within a period of six months and it would not be governed by the fundamental rules. The judgment in the case of **Mohd. Aslam** (supra), reviewed in the case of **R.R. Pillai and others** (supra) provided as under:

"11. It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not Government servant."

6. The Learned Counsel for the respondents further submits that URC employees filed a Review Petition followed by the

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Curative Petition against the Apex Court order dated 28.04.2009, and the Hon'ble Supreme Court was pleased to dismiss both. This implies that the Central Administrative Tribunal will no longer have the jurisdiction to hear the original application filed by the URC employees as they have not been deemed to be Government servants.

Facts-in-Issue

7. Having heard the Learned Counsel for the parties and having gone through the pleadings, the following facts-in-issue emerges for consideration:-

(i) Whether the Unit Run Canteen Employee are Government servant?

(ii) Whether the judgment in R.R. Pillai's case (supra) is binding upon the applicants, who were parties to the Mohd. Aslam's case (supra)?

(iii) What relief, if any, be extended to the applicants?

Whether the Unit Run Canteen Employee are Government servant?

8. This was one of the issues dealt with in ***Mohd. Aslam's*** case, which considered the cases of ***Union of India and Another vs. Chotelal and Others*** (1999) 1 SCC 554 and ***Parimal Chandra Raha and others vs. Life Insurance Corporation of India and others*** reported in 1995 Supp.(2) SCC 611, and came out with a categorical finding that the URC employees were Government servants. In the case of ***R.R. Pillai*** (supra), a three judges' bench reviewed the case and held that the essential ingredients of

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employer-employee relationship between the Government and its employee were missing in the case of relationship between URC employees and the Defence Ministry. To borrow words from R.R. Pillai (supra):

"8. In the case of Aslam's case (supra) a Bench of this Court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the applicant of URCs seeking financial assistance. URCs can also take from other Non-Public Funds. Further observations regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD. Additionally, in Aslam's case (supra) reference was made to Chandra Raha and Ors. Vs. Life Insurance Corporation of India (1995 Supp (2) SCC 611). The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.

9. This judgment has reviewed in the case of Mohd. Aslam (supra) and holds good and binding. The applicant has further relied upon the OA decided by the Jodhpur Bench vide OAs No.150, 151, 152, 153 and 154 of 2008, wherein the Jodhpur Bench of the CAT has held:

"10. in view of the unequivocal findings of the Hon'ble Apex Court in Pilla's case the request of the applicant to be considered as a Government servant is negated. But, at the same time, we feel that a fresh look is required into this matter at the level of policy makers in Government organized slavery is anathema to the concept of Welfare state. The legal provisions shall not be engines of oppression. The actions of the Government must be pervaded with equity and fairness. The Registry is directed to forward a copy of this judgment to the Secretary of Defence for him to formulate an appropriate formula to prevent the mis-use and abuse of human labour. Since the plea of applicant with regard to her claim of being a Government servant is negated, the OA is dismissed but with no orders as to costs."

10. The applicant has further relied upon the judgment of the Principal Bench of the CAT in OA No.2620/2011 (**Shrikant Bharti**



vs. Union of India & Ors.). The relevant part of the judgment reads as under:

"As far as the preliminary objection raised by the respondents is concerned, it is too late for them to do so as this Tribunal had already entertained two of his OAs and they have already complied with the same by reinstating him in service. Even otherwise, the employees of the Unit Run Canteens are working under the respondents and it cannot be said that the dispute raised by them does not come under the purview of this Tribunal."

11. On the other hand, the Division Bench of this CAT in the case of Mohd. Aslam & Ors vs. Union of India, in MA No.99/2010 and connected case has gone into the same very issues and has held that :

"7. A Review Petition (Civil) No.1296/2009 filed in the said Civil Appeal No.3495/2005 i.e. in the common order passed in Shri R.R. Pillai's and others case, was also dismissed by the Hon'ble Supreme Court by its order dated 29.10.2009. Again a Curative Petition (C) No.43/2010 filed in Review Petition (C) No.1296/2009 in Civil Appeal No.3495/2005 was also dismissed by the Hon'ble Apex Court by its order dated 27.04.2012.

10. This Tribunal allowed the OA Nos.46/1999 and batch by its common order dated 02.04.2002 as if it has jurisdiction over the lis involved as no such question neither raised or argued at that time. However, though initially the Hon'ble High Court of Rajasthan at Jodhpur affirmed the orders of this Tribunal, but finally the Hon'ble Apex Court by its order dated 28.04.2009 in Civil Appeal No.3495/2005 and batch categorically held that Mohd. Aslam's case reported in 2001 SCC (L&S) 302 was not correctly decided, and further held that the employees of Unit Run Canteens of the Armed Forces are not Government servants.

11. In view of the categorical declaration of law, this Tribunal had not been having jurisdiction in respect of the service matters of the applicants and other similarly situated employees of the Unit Run Canteens of the Armed Forces even as on the date of passing of common order dated 24.02.2002 in OA No.46/1999 and batch. In this view of the matter, this Tribunal cannot have any jurisdiction to pass orders in the MAs filed in the said OAs. Accordingly, the MA Nos.99/2010, 101/2010, 103/2010, 105/2010 and 124/2010 are dismissed. For the same reason the MA Nos.100/2010, 102/2010, 104/2010, 106/2010 and 125/2010 filed for condonation of delay are also dismissed. However, this order shall not preclude the applicants from availing their remedies before the appropriate forum in accordance with law, in case any adverse orders are passed by the respondents."

12. In another recent judgment in OA No.319/2011 (**Praveen Kumar & Ors. vs. Union of India**), this very bench of the CAT has held:


"It is well admitted that the base on which the URCs operate are on the units of Defence Service and that they are subject to the Rules and that they are subject to Rules regulating the Terms and Conditions of Civilian Employees paid out of the Non-Public Fund and that the instructions have been issued by the QMG and further that the Issuing, Disciplinary, Appointing and Appellate Authorities are serving officers of the unit. These provisions notwithstanding, the twin tests that exist for ascertaining whether an employee is a Government employee or not, as

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discussed in paragraph 8 of this order are the source of payment and the master-servant relationship. Where one of these elements are missing that relationship remain unfulfilled. In view of such categorical findings from the Hon'ble Apex Court in the Case of RR Pillai & Ors vs. Union of India & others (supra) the matter appears to be well settled."

13. The aforementioned cases did not leave the issue under doubt. Here, at the same time, the applicants contend **"at the most the same (judgment in Mohd Aslam's) can be said to be as per in-curium which would remain binding between the parties thereto. It was made applicable to applicants therein and also other i.e. non-applicants by this bench of the Tribunal. However, the same remains applicable to the case of the applicant as well others who were at least the parties to Mohd Aslam's case. The law of precedent has been clarified exhaustively in Union of India vs. Madras Telephone SC & ST Social Welfare Association, reported in (2007) 1 SCC (L&S) 35. The applicants are therefore not at all affected by the judgment delivered in RR Pillai's case."**

This can only be done by having a look at the provisions of Article 141 and 142 of the Constitution of India. Article 141 provides in common language that the Supreme Court is not only a constitutional Court but it is also the highest Court in the country, the final Court of the appeal and in this capacity what the Supreme Court lays down is also the law of the land. All courts in India are bound to follow the decisions of the Supreme Court. The law laid down by the Supreme Court is binding on all courts and tribunals, as per the decision in **Union of India v. Kantilal Hematram Pandya**, (1995) 3 SCC 17 (para 6). The general principle of law laid down by the Hon'ble Supreme Court is applicable to every person including those who were not parties to that order [**U.P.**



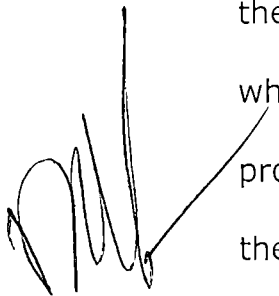
Pollution Control Board v. Kanoria Industrial Ltd., (2001) 2 SCC 549 , 558 (para 18)]. Judicial discipline to abide by declaration of law by the Supreme Court cannot be forsaken, under any pretext by any authority or court, be it even the highest court in a State, as per the decision in the **State of Orissa v. Dhaniram Luhar**, (2004) 5 SCC 568, 571072 (para 6). A decision of the Supreme Court and the High Court must be respected and carried out by subordinate Courts [**Som Mittal vs. Govt of Karnataka**, (2008) 3 SCC 574, 580-581 (para 9)]. The subordinate courts are further governed by the doctrine of *stare decisis*, which simply means to stand by decided cases. In other words when law was decided by a court of competent jurisdiction authorised to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by a competent authority. This doctrine *stare decisis* is to be always followed strictly by the courts of law in order to avoid confusion and uncertainty and to subserve the ends of justice [**Mishri Lal v. Dhirendra Nath**, (1999) 4 SCC 11 paras 13 and 16)]. On the other hand, the doctrine *per incuriam* means a decision rendered by ignorance of the previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law [**Central Board of Dawoodi Bohra Community v. State of Maharashtra**, (2005) 2 SCC 673, 679-80 (para 7)].

14. Here, the decision in **RR Pillai's** case (supra) or in the case of **Praveen Kumar** (supra) or in the case of OA No.49/1999 and

others, have not been delivered *per incuriam*. On the other hand, we find that in the case of **Shrikant Bharti** (supra) and **Ram Sukh Rana** (supra) have been delivered contrary to the ratio *decidendi* as laid down in the case of **R R Pillai** (supra). Hence, we are of the firm opinion that as per the afore cited decisions, this Tribunal is bound by a compulsion to follow the ratio laid down in the case of **RR Pillai** (supra).

Whether the judgment in R.R. Pillai's case (supra) is binding upon the applicants, who were parties to the Mohd. Aslam's case (supra)?

15. In so far as the second issue is concerned it is sufficiently answered by the discussion in respect of issue No.1. Devoting any more space to area could only add to the length of this order. As discussed, the powers of the Hon'ble Supreme Court arises from Article 141 of the Constitution of India, which has been discussed in some length. The learned counsel for the applicants has submitted that judgment of **RR Pillai's** case (supra) has not been made under Article 142 of the Constitution of India. Here is expedient to look into the provisions of Article 142. This Article vests the Supreme Court with a repository of discretionary power that can be wielded in appropriate circumstances to deliver "complete" justice in a given case. These constitutional powers cannot, if any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when where it may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject. Here, there are no statutes covering the issue that whether the URC



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employees are Government servants or not. Had it been otherwise that statutes could have prevailed the power of Article 142 is not in contravention to other powers of the Hon'ble Supreme Court but is to be viewed in a constructive frame work in order to prevent obstruction to the stream of justice [**Union of India v. Shardinu**, (2007) 6 SCC 276, 291 (para 33)]. We certainly do not agree with the contention of the learned counsel for the applicants that the judgment in RR Pillai's case (supra) has not been rendered under Article 142 of the Constitution of India, and hence would be binding. In so far as the issue of Sixth Pay Commission report is concerned, it is true that report has been dealt with URC employees as Government servant provides :

'Canteen Staff 3.8.7 Canteen staff comprises staff of both non-statutory canteens as well as statutory canteens in ministries like Railways and Defence. Employees of both statutory as well as non-statutory canteens are treated as Government employees. The Fifth CPC had recommended a specific structure for the various posts existing in different canteens in Central Government. Many of the posts of the canteen staff are presently in Group 'D' scales of pay. As a result of the general recommendations made by the Commission for Group 'D' posts, all the posts of canteen staff in Group 'D' shall not be placed in the revised pay band PB-1 of Rs.4860-20200 along with grade pay of Rs.1800 once the staff occupying these posts is suitably retrained and made multi-skilled. Other posts of canteen staff in the pay scales of Rs.3050-4590, Rs.3200-4900, Rs.4000-6000 and Rs.4500-7000 shall be extended the corresponding replacement pay bands and grade pay. The posts of canteen staff in the pre-revised pay scales of Rs.5000-8000 and Rs.5500-9000 shall stand merged in the pay band PB-2 of Rs.8700-34800 along with grade pay of Rs.4200.

16. However, the report of the SPC is recommendatory by nature and the Government is not bound by it until accepted. The report has no strength to render the status of a Government employee upon a category of persons who are not otherwise as has been seen earlier in respect of issue No.1. The learned Counsel for the applicant has not been able to produce any evidence to support that this part of the report of Sixth Pay Commission has been accepted.

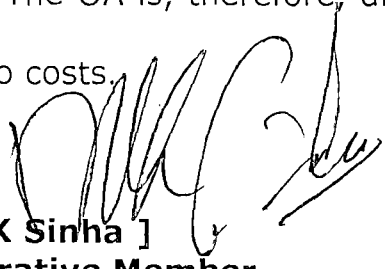
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What relief, if any, be extended to the applicants?

17. It is quite clear that the applicants do not fall within the category of Government employee and as such this Bench has no jurisdiction to entertain their cases. This is the fact that they have been entertained in the past on account of principle of *per ignoratia*. The OA is, therefore, disallowed without there being any order as to costs.



[BK Sinha]
Administrative Member



[G. George Parackal]
Judicial Member

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