

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 468/05

Monday this the 30th day of April, 2007

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

P.Kamalam,
D/oK.Madhavan Nair
Parkkal House,
PO. Edakulathur, Thrissur
Accountant, Unit Run Canteen
C/o 24 Kerala Bn NCC, Thrissur.Applicant

(By Advocate Mr. P.V Chandramohan)

V.

- 1 The Deputy Director General, NCC
NCC Directorate (K&L)
Thiruvananthapuram.
- 2 Chairman and Group Commander,
NCC Group HQ
Ernakulam, Kochi.35.
- 3 Officer in Charge,
Unit Run Canteen
C/o 24, Kerala Bn NCC
Kanattukara, Thrissur.11.
- 4 M.N.Janardhanan
Pulikal Madam House,
PO. Mundur,
Vattamkulam, Malappuram-679578.
- 5 Union of India, rep. By its Secretary
Ministry of Defence, New Delhi.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC (for R1to3&5)
Mr. Suresh Jose (for R.4) (not present)

This application having been finally heard on 30.4.2007, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance in the present O.A is that she had been illegally deprived of her rightful claim for appointment as Assistant Manager in the Unit Run Canteen (URC for short) Trichur and that the 4th respondent Shir M.N. Janardhanan has usurped that post with effect from 1.7.01. She has, therefore, sought a direction to the respondents to promote and post her as Assistant Manager at URC, Trichur with retrospective effect from 1.7.2001 and to quash and set aside the Annexure.A5 decision of the Canteen Committee held on 26.6.2001 appointing the 4th respondent Shri Janardhanan as Assistant Manager-in-Charge (Grocery) in place of Shri VSE Sankaran, the incumbent of the said post who retired on 30.6.2001.

2 The applicant's case is that she entered service in the URC Trichur as a Sales Assistant on daily wages with effect from 23.12.1989 and got regularized in that post with effect from 1.12.1990. She was promoted as Bill Clerk on 1.7.94 and then as Accountant with effect from 4.1.2001. She is a degree holder in B.A (Economics) with pass in Typewriting Lower and Shorthand English Lower. The 4th respondent was initially appointed against a temporary vacancy at Group HQ, Ernakulam on having sponsored by the Employment Exchange. Thereafter, he was appointed on the directions of the second respondent,, namely, the Chairman and

Group Commander, NCC Group HQ, Ernakulam vide his order dated 4.5.1999 as Assistant Manager (Admn) after having the said post notified vide the Annexure.A2 notice, put on the notice board of the Canteen on 11.2.1999 wherein it was specifically stated that the candidates selected was required to work in Ernakulam with the specific responsibility to look after all canteen matters at Group HQ Ernakulam. Therefore, none of the employees of URC, Trichur including the applicant applied for that post. The following duties of the Assistant Manager (Admn) were also specified vide letter No.915/Q1/Canteen/325 dated 29.1.2000 (Annexure.A3) issued by the NCC HQ:

"1 Standing orders: He will appraise himself of these orders and those concerning his own duties in detail.

2 Official correspondence: He is responsible to receive all canteen correspondence dispatched from URC, put up to Chairman, and its further disposal. Special care will be taken on timely submission of liquor demand to the Depot and processing the same.

3 Canteen Cards: He is responsible to maintain a proper accounting of blank canteen cards and onward dispatch to URC as and when new Station orders are published.

4 He will carry out all other duties assigned to him by the Canteen Officer/Manager in connection with the administration of the Canteen.

5 He will liaise with Station Headquarters/CSD Depot Cochin and act as link between URC and Station Headquarters Cochin/CSD Depot.

6 He will maintain all files on canteen at Group HQ and will be responsible for Group Commander for accounting cards and other documents".

After he joined in May,1999, the 4th respondent, according to the

applicant, has been trying his level best to come over to URC, Trichur which is comparatively closer to his residence at Mundur in Malappuram District. In February, 2000 itself he managed to get one Bill Clerk Shri K.V.Balakrishnan transferred from Trichur to Headquarters and got himself appointed against that vacancy. However, his transfer had to be cancelled after a month because of the protest made by the said Shri K.V.Balakrishnan. Again from 1.1.2001, the 4th respondent managed to get himself posted as Assistant Manager in URC Trichur to set up a computer system there under the oral orders of the Chairman (second respondent) though there was no vacancy for an additional Assistant Manager and the only post of Assistant Manager available there was occupied by Shri VSE Sankaran. He was well aware that after the retirement of Shri Sankaran on 30.6.2001, with his influence at the Headquarters, he could easily manage to occupy that post and continue at Trichur indefinitely. As apprehended by the applicant, the Canteen Committee met on 26.6.2001 decided that the 4th respondent would take over as Assistant Manager (Grocery) with effect from 1.7.2001 and the applicant would take over the additional charge of Computer from the 4th respondent.

3 The contention of the applicant is that the duties of the Assistant Manager (Administration) is different from that of the Assistant Manager (Canteen). He further submitted that the practice being followed hitherto was to appoint the Assistant Manager

(Grocery) at U.R.C Trichur by promoting the existing Bill Clerk/Accountant on the basis of seniority and suitability. She cited the precedents of Shri T.K.George, the previous incumbent of the post of Assistant Manager (Grocery) who was promoted from the post of Bill Clerk in the URC,Trichur and appointed with effect from 1.7.94 by Annexure A11 order dated 20.6.94 and Shri VSE Sankaran, the next incumbent of the post was the senior most Accountant in the URC, Trichur and he was appointed by Annexure A12 order dated 26.4.96. The reason, according to the applicant, for such procedure being followed is that the principal duty of the Assistant Manager at Canteen is to manage the grocery section of the canteen and only persons having experience in dealing with groceries would be able to perform the duties attached to the said post as per the Annexure A10 document as mentioned below:

1 Standing Orders: He will appraise himself of these orders in general and those concerning his own duties in detail.

2 Draft Demands: In consultation with the Manager, he will prepare draft monthly demands assessed to cater to a 25% reserve by the scheduled time of receipt of stores.

3 Receipt of Consignment: He will inspect all groceries at the time of receipt to ensure serviceability, and update ground balance in his section, without stopping sales of the day.

4 Display: He will ensure that suitable quantity of all items other than controlled items are neatly displayed with retail rates and ground balance updated daily.

5 Controlled Items: He will keep these in his store and make sales only with the sanction of the Canteen Officer.

6 Eligibility of Customers: He will keep an updated list of eligible ex-Servicemen with him for ready reference and will check Identity Cards/Canteen cards, in case of doubt before making any sale.

7 Cash Memos: He will keep separate Cash Memo Books for Servicemen and Ex-Servicemen. He will prepare Cash memos in duplicate, collect the cash and then handover/sold items with the original cash memo to the customers. He will NOT make any sale on credit or on installments.

8 He will restrict the amount of sale to each customer within the normally understood quantity of provisions of one person for a month.

9 Summary: He will close sales for the day at 1330 hours (1130 hrs on Saturdays) and prepare a summary of Daily Sales. This summary and the cash proceeds will be deposited with the Manager.

10 Stock Taking: He will carry out his preliminary check of ground balance in advance. The deficiency or damage to any item while on his charge will be made up by him as ordered.

11 Timings: He will open and close the canteen strictly as per laid down timings.

12 Cleanliness: He will always keep the section neat and clean.

13 Security: He will:-

- A Close sales strictly as per laid down timings.
- B Prevent the access of any customers beyond the counter.
- C Lock the Section when left unattended.
- D Not allow inflammable article in the premises.
- E Not allow accumulation of waste.
- F Be present during sealing and opening of seals by the Manager."



4 The applicant further submitted that when the post of Assistant Manager was getting vacant with effect from 30.6.2001, as per the usual practice, she applied for the same way back on 1.6.2001 itself. However, without considering her rightful claim, the second respondent appointed the 4th respondent by the Annexure.A5 order. Aggrieved by the said order, she submitted a representation dated 11.2.2002 to the second respondent putting forth her claim for the post in preference to the 4th respondent. This was followed by other representations dated 15.10.04, 17.11.04, 15.12.04 to the second respondent. Since she has not given any reply she made Annexure.A6 representation to the first respondent, namely Deputy Director General, NCC Directorate (K&L), Thiruvananthapuram followed by a reminder on 5.3.2004. The said representations were finally disposed of by the first respondent by Annexure.A7 order dated 31.3.05 in a cryptic manner saying that there was no functional requirement for the post of second Assistant Manager and accordingly her request for the post of Assistant Manager cannot be acceded to.

5 The official respondents in their reply has submitted that the applicant cannot be appointed as Assistant Manager under any circumstances as there is already an employee of a similar status ie., the 4th respondent who was appointed by the URC as per the rules on the subject. They have also submitted that there is no requirement of an additional Assistant Manager in the URC, Trichur.

They have however, denied that the appointment of the 4th respondent as Assistant Manager in URC, Trichur was made in a dubious manner as alleged by the applicant. The post of Assistant Manager was open to all including the applicant but no one from the URC staff including the applicant applied for the post and hence the 4th respondent was given appointment on open selection on 4.5.99. They have also submitted that the 4th respondent was also a qualified computer operator during his service with the Indian Army and he had also worked as Canteen Staff of similar canteens in regular army and hence his working at URC, Trichur was justified. It is also the contention of the respondents that seniority and qualifications cannot be construed to be the only criterion to appoint an employee to a responsible post of Assistant Manager in the URC. The appointments of Assistant Managers from time to time have been done on the basis of merit and suitability and no deviation was made in the instant case, as alleged. They have also stated that since there was already a serving Assistant Manager in the URC, the requirement of an additional Assistant Manager in URC after Shri VSE Sanakran retired is not felt.

6 Though notice was issued to the the 4th respondent and duly served on him, neither he nor any one on his behalf was appeared or filed any reply.

7 We have heard Shri P.V.Chandramohan for the applicant and Shri TPM Ibrahim Khan, SCGSC for the official respondents.

We have also gone through the pleadings. The undisputed fact is that the 4th respondent was appointed through open selection on 4.5.99 under the specific directions of the second respondent, namely, Chairman and Group Commander, NCC Group HQ, Ernakulam to look after the canteen matters of Group Headquarter, NCC Ernakulam. His clearly defined duties included liaison with the Station Headquarters/CSD Depot Cochin and act as link between URC and Station Headquarters Cochin/CSD Depot. It is also a fact that the post of Assistant Manager (Grocery) in URC Trichur was in existence much earlier and the previous two incumbents of that post was appointed by promotion of the existing staff including Bill Clerks and Accountants. Both the posts of Assistant Manager (Admn) at Group HQ, Ernakulam and the Assistant Manager (Grocery) at URC, Trichur were different with distinct duties and responsibilities and both were not interchangeable. While the applicant was a staff of the URC, Trichur, the 4th respondent was not. Hardly the 4th respondent worked against his post for eight months in Ernakulam than he got himself appointed at URC, Trichur from February, 2000 by transferring the Bill Clerk from Trichur to Headquarters thereby creating a vacancy there. However, he had to be recalled to Ernakulam immediately. Again the 4th respondent was placed at URC Trichur with effect from 1.1.2001 without any administrative orders of any authority, allegedly for the purpose of computerization of the Canteen. After he completed his task and trained the staff

including the applicant in computer, he did not go back to his post in Ernakulam. He managed to continue there as in charge of computer till the Assistant Manager in charge of Grocery Shri VSE Sanakran retired on 30.6.2001. Before the retirement of Shri Sankaran itself, the Canteen Committee meeting was held on 26.6.2001 presided over by the second respondent and decided that the 4th respondent should take over as Assistant Manager (Grocery) with effect from 1.7.2001 and he was accordingly appointed. By permitting the 4th respondent to work in URC, Trichur from January, 2001 on the oral instructions of the 2nd respondent, the Canteen Committee even bestowed on him the status of 'the existing staff of URC, Trichur' whereas he actually belonged to Group Headquarters, Ernakulam. Thus for six months two Assistant Managers were working in URC (Trichur) though there was only one post and according to the respondents themselves, there was no scope for an additional Assistant Manager in Trichur. From the Annexure.A1 extract of the meeting of the Canteen Committee held on 6.2.99 it is seen that it was under the direction of the Chairman that the appointment of the Assistant Manager (Admn) was made and not based on any functional requirement or any justification. The 2nd respondent in fact allowed the 4th respondent to abandon the post for which he was appointed in Ernakulam to remain in URC, Trichur. The only inference that could be drawn is that the appointment of the 4th respondent as Assistant Manager (Admn) in Group Headquarters,

Ernakulam itself was unnecessary and unjustified. The Canteen fund is also public fund and it cannot be allowed to be misused by making unnecessary appointments without adequate justification and then to be abandoned for the personal benefit of the incumbent. The eye of the 4th respondent was more on the post of Assistant Manager (Grocery) at URC, Tirchur than on the post of Assistant Manager (Admn) at Ernakulam for which he was appointed. This is more than evident from the fact that when the post of Assistant Manager (Grocery) under the UCR Trichur was to fell vacant with effect from 1.7.2001, the 4th respondent has already been sent there in advance as Assistant Manager (Automation) virtually abandoning his duties and responsibilities at the Headquarters. When the post of Assistant Manager (Grocery) fell vacant, the official respondents did not make any attempt to advertise that vacancy calling the willingness of the eligible employees from the existing staff. The practice so far followed by appointing the seniormost Bill Clerk/Accountant as Assistant Manager (Grocery) was also given a go-bye. The entire procedure adopted in appointing the 4th respondent as Assistant Manager (Grocery) URC, Trichur is arbitrary and whimsical.

8 In the above facts and circumstances of the case, we are of the considered view that the appointment of the 4th respondent as Assistant Manager (Grocery) at URC Trichur cannot be sustained.

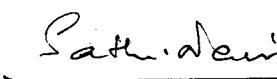
 Accordingly the Annexure A5 Minutes of the meeting held on

26.6.2001 deciding to appoint the 4th respondent Shri Janardhanan as Assistant Manager (Grocery) is quashed and set aside. Consequently his appointment to the said post with effect from 1.7.2001 is also quashed and set aside. The respondent No.2 shall issue necessary orders cancelling the appointment of Assistant Manager (Grocery) URC, Trichur within one month from the date of receipt of this order. In the absence of any Recruitment Rules/Regulations regarding appointment of Assistant Manager (Grocery) at URC, Trichur the official respondents are directed to follow the existing procedure of selecting the eligible suitable existing staff of the U.R.C belonging to the cadre of Bill Clerks/Accountants. We, therefore direct the official respondents to invite applications for the said post within one month from the date of receipt of this order. The applicant may also apply for the said post and the Board of Officers shall duly consider her claim and appoint her to that post, if found suitable. To avoid any future controversies and disputes, the 1st respondent shall ensure that clear-cut rules and Regulations for the appointment of staff of the URCs are made and published within six months. There shall be no order as to costs.

Dated this the 30th day of April, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

s


SATHI NAIR
VICE CHAIRMAN