

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 100 of 2007

Friday, this the 13th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER

N. Krishankutty,
(C/o. Income Tax Canteen, Trivandrum),
T.C.No. 10/1029, TRA - 76,
Lekshmy Bhavan, Thozuvancode Lane,
Vattiyoorkavu P.O, Trivandrum : 695 013 Applicant.

(By Advocate Mr. Arun Raj S)

v e r s u s

1. Union of India,
Represented by the Secretary,
Ministry of Finance, North Block,
New Delhi : 110 001.
2. The Chief Commissioner of Income Tax,
Central Revenue Building, I.S. Press Road,
Kochi.
3. The Commissioner of Income Tax,
Aayakar Bhavan, Kowdiar,
Thiruvananthapuram : 695 003
4. Director (Canteens),
Government of India, Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
3rd Floor, Lok Nayak Bhavan, New Delhi : 110 003.
5. Central Board of Direct Taxes, North Block,
New Delhi – 110 003 Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question is short. Four individuals were inducted in canteen in 1987 when it was set up. However, there was a ban on recruitment at the relevant point of time. In

the wake of the decision of the Government in pursuance of a Supreme Court Decision to treat Unit run canteen as regular government employees, vide Annexure A-1 order, steps were taken for such regularization and out of those 4 employees the first three were absorbed as Group D employees during 1993 but the name of the 4th employee i.e. the applicant had not been considered at that time. It was later in 2001 that his case was taken up for regularization vide letters dated 7-3-2001 and 27-3-2001. Nothing concrete could emanate. However, in 2007, when the matter was taken up with DOPT, the same informed as under:-

"Under the existing instructions, it is not permissible to engage casual employees in Departmental Canteen. There is no provision for regularisation of casual employees in the Departmental Canteen. The length of service of casual employees do not give any vested right to them to be regularised. In view of this, it may not be appropriate to regularise the employees of the Departmental Canteen"

2. The applicant challenges the same and prayed for the following:-

(a) Hon'ble Tribunal may be pleased to declare that the applicant is eligible to be regularised / declared as a Central Government employee in the category of Peon / Farash and extend all the benefits available to the other Central Government employees of comparable status with effect from 1.10.1991.

(b) Hon'ble Tribunal may be pleased to direct the respondents to issue necessary orders regularising/declaring the applicant as a Central Government employee and extend all the benefits available to the other Central Government employees of comparable status with effect from 1.10.1991 without any further delay."

3. After exchange of counter, rejoinder and additional affidavit by the respondents, the case has been heard.

4. Counsel for the applicant submitted that from the time of initial engagement the applicant has been engaged in canteen work and he cannot be penalized for the inaction on the part of the respondents in considering his case when those who had been appointed

along with him had been considered for regularization.

5. Counsel for the respondents submitted that the applicant was not in service for some time.

6. Arguments were heard and documents perused. It is seen from Annexure A-2 order that even in 1997 the DOPT confirmed the entitlement to regularization of unit run canteen employees, provided their initial appointment was in a proper manner. The applicant had been claiming for regularization from the beginning and in fact as early as on 2-03-2001 vide Annexure A-4, the respondents have confirmed to the Ministry of Finance confirming the engagement of the applicant in the canteen along with three other employees (who were regularized in 1993) and also stated "*Shri Krishnankutty was recruited on a temporary manner in 1987 due to the ban that was existing at that time. He continued even now as a canteen employee (bearer) and hence he should be treated as having been recruited as a canteen employee on a regular basis.*" The applicant in his rejoinder has annexed as Annexure A-7 an order of the DOPT dated 11.12.2006 regarding regularization of those casual labourers who had been engaged in a proper manner, who have been serving for more than a decade but who have not so far been regularized. Though vide Annexure R-2 and R-6, it was stated that the applicant was not appointed as a regular casual labourer, it was clearly stated in Annexure R-7 that the case of the applicant "was not proposed for regularization on account of the ban" and his case was recommended for consideration "for regularization as casual labour". This was reiterated in Annexure R-8 as well. All these would go to show that the Respondents were thoroughly satisfied that the applicant was entitled to be considered for regularization. Nevertheless, the OA has been opposed by the respondents. Annexure R-12 and R-13, which have been filed in compliance with an order of this Tribunal which only goes to

show that it cannot be ascertained as to upto which date the applicant had been working in the canteen. According to the counsel for the applicant, even today the applicant has been working. In any event, it is seen from the records that the applicant was engaged along with other three individuals, whose services were regularized as early as in 1991 and that while the cases of the other three were considered for regularization, that of the applicant was not. In 2001 attempt was made for the same but of no avail. Though attempt is made by the respondents to picture the case of the applicant as if the initial appointment was not by proper means (see Annexure R-2), though in 2008 (Annexure R-12) it was stated that it could not be ascertained as to upto which period the applicant was serving, Annexure A-4 communication dated 27th March, 2001 issued by the Dy. Commissioner of Income tax on behalf of the Chief Commissioner of Income tax clearly goes to show that the department was specific that the applicant was functioning since 1987 onwards and was fully deserving to be regularized. This has not been disputed by the respondents in their counter. In fact, para 1 and 2 of the counter clearly goes in favour of the applicant. Under these circumstances, it has to be held that any contention in the additional reply or additional affidavit, against the facts as contained in the counter should be dismissed being an after thought.

7. In view of the above, it is clear that the applicant is entitled to be considered for regularization at par with those who had been inducted along with him in 1987 and whatever benefits were accrued to them should be equally accrued to the applicant. The OA, therefore, succeeds. Respondents are directed to consider regularization of the applicant's services on the same lines as the three as contained in para 2 of their counter and afford necessary fixation of pay and allowances, seniority etc., However, no actual monetary benefit till the date of regularization is available to the applicant.

[Signature]

8. Necessary orders in regard to regularization, fixation of notional pay and seniority w.e.f. the date the three individuals appointed in the canteen in 1987 along with the applicant should be passed within four months from the date of communication of this order. The entire period from 1987 save period if any spent on leave or loss of pay shall be treated as qualifying service for all purposes.

9. Under the above circumstances, there shall be no orders as to cost.

(Dated, the 13th June, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.