FINAL ORDER

26-8-1987

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

ORIGINAL APPLICATION NO.160/87 TO 164/1987

K.K. Sukumaran ... Applicant in OA 160/87

C.K. Vijayan ... Applicant in OA 161/87

M.P.Madhusoodanan ... Applicant in OA 162/87

K.A. Asokan ... Applicant in OA 163/87

T.P. Krishnan ... Applicant in OA 164/87

Vs

1. The Secretary,
Department of Postal Services,
New Delhi.

2. Senior Superintendent of Post
Offices, Ernakulam Division,
Chairman of Postal Canteens,
Postal Complex Building,
Ernakulam, Cochin-11.

3. Secretary of Postal Canteens,
Postal Complex Building,
Ernakulam, Cochin-11.

Respondents in all the cases

For Applicants: (in all cases) — Mr. K. K. Balakrishnan, Advocate

For Respondents 1 & 2 (in all the cases) — Mr. K. Karthikeya Panicker, Addl. Central Govt. Standing Counsel.

For Respondent 3 (in all the cases) — Mr. C. Verghese Kuriakose, Advocate

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CORAM:

Hon'ble Shri C. Venkataraman, Administrative Member

And

Hon'ble Shri G. Sreedharan Nair, Judicial Member

O R D E R

(Pronounced by Hon'ble Shri C. Venkataraman, Administrative Member)

These applications have been filed by five employees in the Postal Canteen, Postal Complex Building, Ernakulam. They have been aggrieved by a communication dated the 20th January, 1986 addressed by the Secretary, Postal Canteen, to the the Divisional Employment Officer, Cochin, requesting the latter to nominate candidates for selection of staff for various posts viz., Halwai, Tea Maker/Coffee Maker, Bearer, Wash Boy/Dish Cleaner. The applicants have prayed that the department should be restrained from terminating their services in the Postal Canteen and further to regularise their services.

These applicants have been working in the Postal Canteen, Ernakulam continuously from

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dates ranging between 15-7-1985 to 19-9-1986. Though they have been working as casual employees since they were appointed, they had been interviewed and selected prior to their appointment by the officers of the Postal Department Canteen. All their names are registered with the Employment Exchange Ernakulam. They have further stated that the canteen is a departmental canteen and it has been registered with the Directorate of Canteens in the Department of Personnel and Administrative Reforms. The 2nd respondent is the Chairman of the departmental canteen. They have pointed out that the employees of the departmental canteens have been declared as holders of civil posts in connection with the affairs of the Union with effect from 1st October, 1976 as per Government of India Notification

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No.5(2)/23/77 Welfare Canteen dated 11-12-1979. Conditions of service and recruitment rules for these employees with effect from 1-10-1979 are those as framed by the President under proviso to Article 309 of the Constitution. On the ground that the applicants are employees of the departmental canteen and thus holders of civil posts, they have prayed that after their having been selected and continued in their respective posts for over one and a half years, their services should not now be terminated and instead their services should be regularised.

In a Counter Affidavit filed on behalf of the first two respondents, it has been stated that these applications are not maintainable because the applicants are not civil servants appointed to any civil service of the Union or to any civil post under the Central Government.

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The status of the canteen itself is that of a cooperative canteen run by the postal employees and the applicants are only casual employees therein. No written appointment orders had been issued to these casual employees and that they were appointed by the Secretary of the canteen. Besides, the Counter Affidavit points out that the requisition made by the Secretary, Postal Canteen, Ernakulam, to the Employment Exchange is not an order passed against any of the applicants. An application for registration of the canteen as a cooperative body had been submitted to the Registrar of Cooperative Societies on 26th July, 1986 and the same is pending registration. The averment of the applicants that the canteen is a departmental canteen has specifically been refuted and even the existence of a letter addressed to the Director of Canteens for the purpose of registration

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stated to have been sent on 18-12-1983 by the Senior Superintendent of Post Offices has been specifically refuted.

The 3rd respondent in these applications is the Secretary of Postal Canteen. He has filed a reply to the application stating that the canteen in which the applicants are working on casual basis is a departmental canteen set up at Government cost and that it is centrally registered with the Director of Canteens. A copy of the bye-laws for the canteen has also been enclosed along with his reply.

The learned counsel for the applicants contended before us that the canteen is not a cooperative canteen and produced in support of that plea a letter addressed to him on 20th January, 1987 by the Assistant Registrar of Cooperative Societies, Kanayannur, intimating him to that effect. He further pointed out that in response to an application sent on 18th December, 1982 by the Senior Superintendent of Post Offices, Ernakulam

Division, the canteen had been registered by the Director of Canteens in the Department of Personnel and Administrative Reforms on 24th January, 1983 and a number viz., C-53A had been allotted to it. He would accordingly stress that the canteen enjoys the status of a departmentally managed and the employees have the status of those holding civil posts under the Union of India. As the casual employees have been functioning for varying periods ranging between 15-7-85 and 19-6-86 till date continuously, they have a right to continue on a regular basis in the said departmental canteen. Accordingly, he prayed that the application be allowed.

The learned counsel for the first two respondents strongly refuted the contention that the canteen enjoys the status of a

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departmental canteen. According to him, this canteen, from the very beginning was thought of only as a cooperative canteen. Though it has not yet been registered by the Registrar of Cooperative Societies, steps had already been taken as early as in July, 1986 seeking such registration as a cooperative canteen and the formality of registration under the Cooperative Societies Act is expected to be completed in the near future. The appointing authority of Cooperative canteens is ex-officio Chairman and in that capacity he had directed the Secretary of the canteen to take steps for filling up the posts by calling for names from the employment exchange. As the casual employees in this canteen are not holders of civil posts under the Union of India, he prayed that the application be dismissed.

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In this case on the basic question about the status of the canteen itself, there is no agreement between the two sides. The applicants have attached a copy of a letter dated 18th December, 1982 sent by the Senior Superintendent of Post Offices, Ernakulam Division to the Director of Canteens in the Department of Personnel and Administrative Reforms in Ex.P-4 wherein registration of the canteen was sought duly indicating its status as 'departmental canteen' from 15-12-1982. In reply to that in Ex.P-6 the Department of Personnel had allotted Registration number viz. C-53A to the canteen. It was also stipulated in that letter that the registration is required to be renewed every financial year. Though respondents 1 and 2 have denied the existence of the letter dated 18-12-1982 since no such file indexed "H/canteen/82-83" is available with them, we notice from the records

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made available to us that such a letter must in fact have been issued. This is evident from the fact that in letter No.B-19011/4/80m the P & T Directorate, New Delhi, has invited reference to the said letter dated 18-12-1982 addressed to the Director of Canteens in the Department of Personnel, Thereafter, a decision has been communicated to the Senior Superintendent of Post Offices, Ernakulam Division that no useful purpose would be served by registering the P & T departmental canteen with the Department of Personnel. The P&T Directorate had also communicated this decision to the Department of Personnel and Administrative Reforms. This would mean that though registration with the Director of Canteens was sought and obtained by the 2nd respondent, immediately thereafter, the P&T Directorate had communicated their decision that no such registration was needed. In this

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connection we find it significant to note that we are not able to see in the files made available to us any subsequent request for renewal of the registration with the Director of Canteens. We also notice that the Postmaster General, Kerala Circle, had intimated the Senior Superintendent of Post Offices, Ernakulam on 21-6-1983 that the canteen could be registered under the Cooperative Societies Act. We notice from the files that this matter was further examined and ultimately on 29th July, 1986, a request was made to the Joint Registrar of Cooperative Societies, Cochin, to register the canteen as a cooperative canteen. The letter makes it clear that it was decided "at a meeting of the employees of the complex to form a Postal Canteen Cooperative Society" and for that purpose " a managing committee consisting of 8 members has been constituted". It was expresed therein that they were desirous of forming a

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cooperative society and have it registered conforming to the rules and regulations of the Cooperative Department. Registration of the canteen under the Cooperative Societies Act has still however not been completed.

Thus, as far as we are able to see in this case, soon after the idea of a canteen crystalised in December, 1982, a letter was hurriedly sent to the Director of Canteens seeking its registration as a departmental canteen. The canteen was registered by him on 24th January, 1983 with a stipulation that there must be annual renewal of the registration. P&T headquarters, however, did not favour such a registration with the Director of Canteens. Annual renewal of the registration consequently does not seem to have been obtained. While so, the employees had met and decided to form a Postal Canteen Cooperative Society and to have it registered under the Cooperative Societies Act. Necessary letter was addressed to

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the Joint Registrar of Cooperative Societies and registration is still to be completed. It would thus be seen from the above that the canteen, as it stands now, does not enjoy the status either of a departmental canteen or of a cooperative society canteen.

Even if the canteen enjoys the status of a departmental canteen, according to schedule B of Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980, vacancies of posts like Wash Boy, Halwai etc. can be filled only by circulating simultaneously to the local employment exchange, and other offices and establishments of Central Government where departmental canteens are functicning. Therefore, in this case regular appointments to the posts can be made only after following the abovementioned precedure The letter dated 20-1-1986 sent by the Secretary, Postal Canteen is merely a requisition for nomination of suitable candidates for selection

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to various posts like Halwai, Wash Boy/ Dish Cleaner etc. in the scale 196-232. The applicants cannot have a right to be regularly appointed to those posts in a departmental canteen even without considering other names sponsored by the employment exchange.

If the canteen is to be regarded as a cooperative society canteen, then the applicants cannot come to this Tribunal seeking any relief.

Accordingly, in whatever way it is viewed, the applicants' case fails. These applications are therefore dismissed.

Chinkataraman

26.8.87.

(C. VENKATARAMAN)
Administrative Member

(G. SREEDHARAN NAIR)
Judicial Member

Index : ~~Yes~~/No