

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 205 of 1997.

Tuesday this the 5th day of October, 1999.

CORAM:

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

1. V. Sasidharan Nair,
Cook/Halwai, General Post Office
Canteen, Trivandrum.
2. Thulaseedharan Nair P.,
Wash Boy, General Post Office
Canteen, Trivandrum.
3. V. Vijayan, Bearer,
General Post Office, Canteen,
Trivandrum. .. Applicants

(By Advocate Shri M.R. Rajendran Nair)

Vs.

1. Union of India, represented by
Secretary to Government.
Ministry of Communications,
Department of Posts,
New Delhi.
2. Senior Post Master,
General Post Office, Trivandrum.
3. Senior Superintendent of Post
Offices, Trivandrum (North)
Division, Trivandrum.
4. The Chief Post Master General,
Kerala Circle, Trivandrum. .. Respondents

(By Advocate Shri P.R. Ramachandra Menon, ACGSC)

The application having been heard on 5th October, 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to quash A-1, to declare that they are
entitled to receive all the benefits including arrears of pay
and allowances in the respective categories as Government Servants
with effect from 1.10.91.

2. Applicants are employees of the General Post Office (G.P.O. for short), Canteen, Trivandrum. They were working as Cooks, bearers etc. They were being paid salary on par with regular departmental employees. Consequent to the judgement of the Hon'ble Supreme Court dated 29.1.1992, it was decided by the Government of India, that employees of the non-statutory departmental/Co-operative Canteen/Tiffin rooms located in Central Government Offices should be treated as Government Servants with effect from 1.10.1991 and that the employees of these canteens should be given all benefits, as are available to other Central Government employees of comparable status with effect from 1.10.1991, except General Provident Fund and Group Insurance Scheme.

3. Due to the non-extending of the benefits of A-2 order of the Government dated 29.1.92 and A-3 Office Memorandum dated 16.11.92 issued by the Director (Canteens), New Delhi and stopping the subsidy to the Canteen, the applicants being aggrieved, approached this Bench of the Tribunal by filing O.A. 1564/93 and connected OAs and as per A-4 judgement this Bench of the Tribunal declared that employees in non-statutory departmental/co-operative canteens/tiffin rooms located in the Central Government Offices should be treated as Government Servants with effect from 1.10.91.

4. The matter was taken by the respondents before the Supreme Court by filing an SLP and the same was dismissed.

5. Subsequently, A-1 the impugned order has been issued stating that the arrears of pay and allowances paid to the applicants for the period from 1.9.93 to 15.9.96 will have to be recovered forthwith.

6. Respondents resist the O.A. by contending that the arrears were wrongly paid to the applicants, that it was made at a time when ^{the} regular incumbent of the post of Senior Postmaster, Trivandrum G.P.O. was on leave and that during the

from 1.9.93 to 15.9.96, the canteen was run by the applicants themselves on private contract basis and derived huge profits out of it as independent contractors.

7. As far as the contention of the respondents that during the period from 1.9.93 to 15.9.96 the canteen was run by the applicants themselves on private contract basis and had derived huge profits out of it as independent contractors, there is no iota of evidence. Respondents are the authorities to allow the applicants to run the canteen on contract basis. That being so, there should necessarily be documents in proof of the same available with the respondents. Respondents are satisfied by simply making an averment without producing an iota of evidence.

8. Whether the regular incumbent of the Senior Postmaster Trivandrum G.P.O. was on leave or not is of little consequence.

9. It is the case of the respondents that the amount which is sought to be recovered as per A-1 was wrongly paid to the applicants. The applicants have raised a specific ground that A-1 order was passed behind their back in flagrant violation of principles of natural justice. There is no whisper in the reply statement that any pre-decisional notice was given to the applicants before issuance of A-1 order. The respondents ought to have given the applicants an opportunity of being heard before issuing A-1. The same has not been done in this case. That being the position, A-1 is unsustainable since it is in violation of the principles of natural justice.

10. The stand of the respondents that the amount sought to be recovered as per A-1 being the amount wrongly paid to the applicants respondents are entitled to recover the same cannot be countenanced.

11. In Shyam Babu Verma and others Vs. Union of India and others((1994) 27 ATC 121) the Apex Court has held that, since the petitioners received higher scale due to no fault of theirs it shall only be just and proper not to recover any excess amount already paid to them. There is absolutely no case for the respondents that for the excess payment, the applicants are in any way responsible.

12. No argument was advanced on behalf of the applicants as to the relief sought for declaration that the applicants are entitled to receive all the benefits including the arrears of pay and allowances in the respective categories as Government Servants with effect from 1.10.91.

13. Accordingly, Annexure A1 is quashed.

14. O.A. is disposed of as above. No costs.

Dated the 5th October, 1999.

J.L. Negi

J.L. NEGI
ADMINISTRATIVE MEMBER



A.M. Sivadas

A.M. SIVADAS
JUDICIAL MEMBER

rv

List of Annexures referred to in the order:

Annexure A1 : True copy of the Order No. AC/Canteen dated 11.1.97 issued by 2nd respondent.

Annexure A2 : True copy of the Order No. 12./5/91-Dir(C) dated 29.1.1992 issued by the Director Canteens, New Delhi to all Ministries.

Annexure A3 : True copy of the Memorandum No.12/3/92- Dir (C) dated 16.11.1992 issued by Director (Canteens) New Delhi to the All Ministries/ Departments of the Government of India.

Annexure A4: True copy of the Final Order in O.A.1734/94 and connected cases dated 15.11.95 issued by this Hon'ble Tribunal.