

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA. NO. 281/03**

WEDNESDAY, THIS THE 11th DAY OF JANUARY, 2006

**CORAM**

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

1 CR Percival  
Driver  
INS Dronacharya  
Naval Base, Kochi-1

2 NS Sasikumar  
Driver  
INS Dronacharya  
Naval Base, Kochi-1

3 VV Shaji  
Conductor cum Driver  
INS Dronacharya  
Naval Base, Kochi-1

**Applicants**

By Advocate M/s PK Muhammed

**Vs**

1 The Flag Officer  
Commanding in Chief  
Southern Naval Command  
Kochi-6

2 The Commanding Officer  
INS Dronacharya  
Naval Base, Kochi-1

3 The Motor Transport Officer  
INS Dronacharya  
Naval Base, Kochi-1

4 Union of India  
rep. by the Secretary to Government  
Ministry of Defence  
New Delhi.

**Respondents.**

By Advocate Mr. TPM Ibrahim Khan, SCGSC

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The three applicants have approached this Tribunal for regularisation of their services in the posts in which they are working under the control of the Flag Officer, Commanding in Chief, INS Dronacharya and also seek other benefits like Leave, OTA and

Arrears of salary and also a direction to the respondents to continue to employ them in the posts in which they are working. According to the averments made in the OA, the first applicant joined service as Driver on 26.10.1989, the second applicant joined as Driver on 16.6.1994 and the third applicant has joined as Conductor cum driver on 27.7.1987. Their main grievance is that in spite of repeated representations to enhance their salary and other service benefits due to them the respondents have not considered the same and are now attempting to terminate their services.

2 Reply statement has been filed by the respondents stating that the OA is not maintainable in terms the provisions of Section 19 and 20 of the Administrative Tribunals' Act, 1985 as no order has been passed by the respondent by which the applicants are aggrieved. The applicants are not holding any Govt. post nor are they employed in connection with any of the affairs of the State and are not paid from the State exchequer. Hence the Application is liable to be rejected on that score alone. The applicants were employed for driving and conductor duties for conveying school children from residence to school and back and other sundry requirements for which two mini buses were purchased from non-public fund. The non-public fund is generated from the contribution of the Welfare fund of the Naval personnel. It is meant for welfare activities of the families of naval personnel and is controlled by the Commanding Officer. The vehicles purchased out of the said non public fund are property of the unit and in fact are registered in the name of Commanding Officer. But they are not government vehicles. The appointment of the applicants is purely contractual and casual in nature and governed by the terms and conditions as per the agreement drawn with each one of them. The contractual agreement specifically mentioned that they are non public fund employees and would be subjected to the employment conditions as per contract agreement drawn with them. The offer of appointments in which the applicant have accepted the terms and conditions are enclosed as Annexure R-4 to R-6. The new norms as promulgated vide Naval Headquarters letter dated 29.5.2002 (Annexure R-7) gives in detail the service benefits available to such contractual appointees. The applicants had been requesting for pay enhancement from time to time and such enhancements have been given and in addition the applicants have been given bonus and financial assistance by way of interest free loans for various domestic requirements. The applicants have not accepted the terms and conditions enunciated in Annexure R-7 yet and the respondents are willing to implement the agreement in totality

provided they are agreeable.

3 Rejoinder has been filed by the applicants stating that the salary of the applicants is being paid by the respondents drawing the same from the public exchequer.

4 We have heard the learned counsel for both the parties. On the basis of the pleadings the first question to be determined is whether the applicants are Government employees and hold civil posts thereby coming under the purview of the jurisdiction of the Tribunal. Respondents have contended that they are contractual casual employees appointed under the Non-public funds whereas the applicants contend that they are Government servants. The offers of appointment given to the applicants have been produced at Annexure R 4-6. A common clause in all the above orders reads as follows:

"This being a welfare organisation, meant to render service to Defence Service Personnel, the institution is not governed by any statutory provisions of any law including the Industrial Law. Subject to the orders of higher authorities this may undergo change in functions of clauses necessitating summary retrenchment of the staff employed. In that event, you shall have no claim either for alternate employment or for compensation for past service."

Para 4 of the offer of appointment given to the second applicant states as follows:

"The non public Motor Transport facility is a welfare measure provided for convenience of Defence Service Personnel. It is wholly financed from Non-Public (Non-Government) Funds and is administered by the Commanding Officer, INS Dronacharya through his nominated representatives. Employees paid out of this fund cannot assume to be Government Employee and cannot claim any salary, benefit or facility from the Government."

5 The above terms were accepted by the applicants at the time of appointment. According to Section 14 of the Administrative Tribunals Act 1985 dealing with the jurisdiction, powers and authority of the Tribunal, the Tribunal has authority in all service matters concerning a member of an All India Service or person appointed to any civil service under the Union or a civilian appointed to any Defence service and in all service matters pertaining to the service of such persons appointed in connection with the affairs of the Union or any local or other authority within the territory of India or under the control of Government of India or any Corporation or Association owned or controlled by the Government. The service of the applicants in this O.A. clearly do not fall under any of the above categories. They do not hold any civil post in any of the Defence services and they are not paid from Government funds. The applicants do not fall in any of the category of

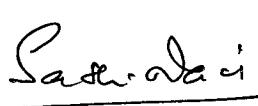
personnel mentioned in Section 14 of the A.T. Act who can approach the Tribunal for redressal in their service matters.

6 The respondents have also relied on the judgment of the Hon'ble High Court of Kerala in OP NO.34353 of 2002 in which the respondent was an employee of Southern Air Command Unit Canteen. Para 17 of the judgment has dealt with the rules governing the conditions of the service of the respondents. It showed that the canteen was being run purely with Non-public funds as a commercial organisation. Therefore the High Court held that the Tribunal erred in holding that such employees hold a civil post under the Government. The applicants in this case also are similarly situated. The non public funds have been created for looking after the welfare activities of the Naval community and the travel facility was constituted as a welfare measure to take the school children of the residents to the school and back. The respondents have also issued the terms and conditions of their employment through non public funds vide Annexure R-7 and the applicants are governed by such guidelines. These guidelines do not have the status of a statutory rule. However, various benefits as available to Government employees have been extended through these guidelines. It is for the applicants to approach the appropriate authority as provided in the terms and conditions, if they have any grievance regarding non-implementation of these guidelines. Clause 42 of the above rule also provides for vesting jurisdiction for legal disputes arising between the employee and the employer in the respective State Courts. Therefore it is for the employees to approach the competent authorities in case they have any grievance.

7 In view of the above legal position, we are of the view that the O.A. is not maintainable not being within the jurisdiction and powers of this Tribunal under Sections 14 and 19 of the Administrative Tribunals Act, 1985. Hence the OA is dismissed. No costs.

Dated ....11th..January, 2006.

  
GEORGE PARACKEN  
JUDICIAL MEMBER

  
SATHI NAIR  
VICE CHAIRMAN

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