

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.289/92

Date of decision: 27.9.1993.

Shri MP Unnikrishnan

..Applicant

Shri M Girijavallabhan, Advocate for applicant.

Versus

1. The Chief Postmaster General, Trivandrum.
2. The Postmaster and Ex-officio Chairman, Departmental Canteen, Head Post Office, Aluva.
3. The Hon Secretary, Departmental Canteen, HPO, Aluva.
4. A Chandrasekhara Pillai, Munnalath Mana, West Desom, Aluva.
5. VR Raju, Poothurayil Veedu, West Desom, Aluva.

..Respondents

Shri George Joseph, ACGSC for respondents 1 to 3.

Shri P Santhoshkumar, Advocate Commissioner.

Shri MR Rajendran Nair, Amicus Curaie.

C O R A M:

The Hon'ble Mr Justice Chettur Sankaran Nair, Vice Chairman
and

The Hon'ble Mr R Rangarajan, Administrative Member

J U D G E M E N T

R. Rangarajan, Administrative Member.

Applicant who was a bearer in the canteen (Tiffin Room) located in Head Post Office, Aluva, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for a direction to re-employ him and also for a declaration that termination of his services is illegal and violative of his rights. He has also prayed for consequential benefits accruing to him under Industrial Disputes Act.

2. Applicant submits that employees of the departmental canteens and tiffin rooms are holders of civil posts by reason of

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notification of the Government of India, No.6(2)23/77-Welfare dated 11.12.1979 and that he is governed by this circular. He was paid a consolidated amount of Rs.400.00 per month initially which was increased to Rs.500.00 from February, 1991. Cost of meals was deducted from his salary and payment was made only for those days when he actually worked. He claims pay as per regular scales of pay. He further submits that canteen employees in Railways were treated as civil servants and that ruling was made applicable to departmental canteen and tiffin room employees of Posts & Telegraph also as per the directions of the Hon'ble Supreme Court in WEP No.6189-7044 and 8246-55 of 1983 (CK Jha and others and PH Sharma & others v. Union of India and others) referred to in Annexure A5. He also relies on Annexure A6 order of Government of India, Department of Personnel, No.12/5/91-Dir(C) dated 29.1.1992 wherein it had been decided that the employees of non-statutory departmental/cooperative canteens/tiffin rooms located in Government offices should be treated as Government servants with effect from 1.10.1991. The applicant has also quoted Annexure A7 order of the Department of Personnel wherein instructions were issued to freeze the strength of canteen employees at the level on 1.10.1991 by banning further creation and filling up of posts in the departmental canteens and tiffin rooms, to support his case. He avers that he was in employment from 1.6.1987 to 9.8.1991 in the departmental canteen of the P&T and hence, he is entitled to regularisation and other benefits. Denial of employment from 9.8.1991 onwards without proper authority and without following proper procedure is violative of his rights.

3. Respondents would submit that the tiffin room at Aluva is not a departmental one. It was initially run by a contractor upto 1986 and thereafter, it was run on cooperative basis by the employees of Aluva Head Post Office and Divisional Office. The Department has no say in the running of the canteen. The subsidy of Rs.1400.00 per month was granted from the Kerala Postal Circle

Welfare Fund which is financed by the employees by taking donation from postal employees. The tiffin room is not registered with the Director of Canteen, New Delhi and hence, has no legal status to be termed as a departmental canteen. The employees of this canteen are engaged by the Tiffin Room Committee and they are governed by rules framed by this Committee. Department disowned any connection with running of the canteen at Aluva.

4. As regards termination of the services of the applicant, the third respondent has submitted that this was due to his questionable character and integrity. The respondents have produced Annexure R3 & R4 complaints received from the employees of the Head Post Office to prove their charge. These charges were denied by the applicant in his rejoinder.

5. Third respondent submitted that as the applicant is not regularly employed with an appointment order and was employed only as and when required, he does not come under the purview of Industrial Disputes Act and also denied any infringement of his rights.

6. The core of controversy is whether the canteen in question is a departmental canteen governed by the decision in Chandrakant Jha & others and PH Sharma & others v. Union of India & others (Writ Petition (Civil) No.6189-7044 and 8246-53 of 1983). A direction was issued by the Bench which heard the matter earlier to produce relevant books. We clarified that order on 10.8.1993. No satisfactory reply was given and the position was still very fluid. The only way to ascertain whether the canteen is subsidised by the Government was by way of examining the books. As we were not sure what the books were, we appointed Shri Santhoshkumar as Advocate Commissioner to examine the books and submit a report on the following questions:

"(a) whether the applicant had been paid by



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the Department. If so, what is the evidence therefor;

(b) Was the canteen receiving subsidy from the Department;

(c) Whether the canteen is governed by Annexure-6 order; and

(d) Both sides may formulate other questions on which the Commissioner will submit his report."

7. The Advocate Commissioner has filed his report dated 20.9.1993. The report indicates that the total wages of Rs.1400.00 per month of canteen employees were given from the departmental subsidy for establishment charges. This statement of the Advocate Commissioner is at variance with the reply statement dated 25.5.1992 filed by the respondents. The reply statement states that the subsidy grant of Rs.1400.00 per month is given from the Kerala Postal Circle Welfare Fund which is financed by employees by donations. We are not sure which statement is correct. The statement of Advocate Commissioner is supported by Annexure C1 which conveys sanction of the Chief Post Master General, Kerala Circle, Trivandrum, for the subsidy grant of Rs.1400.00. Annexure C1 also states that this expenditure is debitable to the sub-head "Canteen" under Abstract 3201-06-101(2) Subsidies, Amenities to Staff. Advocate Commissioner also annexed the C2 communication wherein the subsidy was stopped with effect from 1.8.1993. Advocate Commissioner further stated in his report that in his opinion, Annexure-6 order is not applicable in the present case as the canteen is not a registered one. However, he has left this issue open to be decided by the Tribunal.

8. The report of the Advocate Commissioner is also not very helpful to adjudicate this case. Only the Department who distributes the subsidy and possesses other relevant details is

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capable of deciding whether this case is governed by the above said rulings of the Hon'ble Supreme Court. We do not think it fit and proper to adjudicate this matter without full facts and proper appreciation of facts.

9. However, we would like to bring to the notice of the respondents especially respondents 1 & 2, the decision of the Hon'ble Supreme Court in 1990 (Supp) SCC 191 (MMR Khan & others v. Union of India) wherein the relevant aspects were exhaustively discussed in regard to the various departmental canteens run in Railways. It was held in that case that the workers engaged in statutory canteens as well as those engaged in non-statutory recognised canteens, are Railway employees and that they are entitled to be treated as such. The Court did not recognise the workers in non-statutory, non-recognised canteens as Railway employees. That distinction must be borne in mind by respondents 1 & 2 in the case of workers in the P&T canteens also. This will be possible only if the respondents analyse all factors such as employees' strength in the office where the canteen is located, the necessity of running such canteens both from the view point of statutory requirements and welfare measures and other such criteria. They may take into account the decision taken in the case of Railway canteens by the Hon'ble Supreme Court while making their decision. We do not think it possible either to adjudicate or lay down any criteria to be followed for making the distinction as aforesaid for reasons stated above.

10. In the above back drop we gave a suitable direction in a similar case in OA 1564/93 (V. Sasidharan Nair & others v. Union of India & others) dated 20.9.1993. The above said direction reads as under:-

"We direct the 2nd respondent to take a decision on Annexure 5 as expeditiously as possible. Standing Counsel submits that two months time is necessary for this. We grant two months from today to pass orders as aforesaid. Operation

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of Annexure 5 will stand stayed, until a decision is taken as aforesaid by passing a reasoned order."

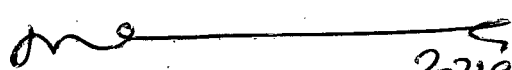
(Annexure 5 quoted in the direction in OA 1564/93 is the letter of the Welfare Officer, P&T Department, No.WLF/8/1/93 dated 9.9.1993)

11. We are of the opinion that the above direction will hold good in this case also. However, while complying with the direction, respondents will also bear in mind the report of the Advocate Commissioner dated 20.9.1993.

12. In the result, we dispose of this application directing the respondents 1 & 2 to take a decision as aforesaid within a period of two months from today and advise the applicant suitably.

13. Parties will bear their own costs.

Dated the 27th September, 1993.


R RANGARAJAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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LIST OF ANNEXURE:

- Annexure A5 : Copy of judgement dated 11.10.91 in Writ Petition
(Civil) Nos.6189-7044 and 8246-53 of 1983.
- Annexure A6 : Copy of OM No.12/5/91-Dir(C) dated 29.1.92 of
Department of Personnel & Training.
- Annexure A7 : Copy of OM No.3(1)/92-Dir(C) dated 30.1.92 of
Department of Personnel & Training.
- Annexure R3 : Letter dated 5.8.89 of Smt Karthiyani, V.A., Sweeper.
- Annexure R4 : Letter dated 10.8.89 of Ms K Pennamma, Group 'D'.
- Annexure C1 : Copy of Memo No.WLF/8/14/92 dated 2.7.1993.
- Annexure C2 : Copy of Memo No.BB-43/Tiffin Room/II dated 16.9.93.

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