

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No. 289/97

Tuesday this, the 1st day of July, 1997.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. Joseph Raju,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
2. K.Radhakrishnan,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
3. C.K.Sajeevan,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
4. N.B.Santhosh,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
5. K.N.Saidhu Madhavan,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
6. K.L.Shajee,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
7. A.B.Shajee,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
8. P.G.Antony,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base, Kochi-4.
9. Muraleedharan,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base,  
Kochi-4.

10. K.K.Uthaman,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base,  
Kochi-4.

11. P.P.Asokan,  
Labourer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Naval Base,  
Kochi-4.

..Applicants

(By Advocate Mr.N.N.Sugunapalan)

vs.

1. The Flag Officer,  
Commanding in Chief,  
Headquarters,  
Southern Naval Command,  
Kochi-4.

2. The President,  
Quartering Committee,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Kochi-4.

3. The Administrative Officer,  
Sailors Married Accommodation,  
I.N.S.Venduruthy,  
Kochi-4.

4. The Assistant Labour Commissioner(Central),  
Kalathiparambil Road,  
Ernakulam South,  
Kochi-16.

(By Advocate Mr.P.R.Ramachandra Menon, ACGSC (R1 & 4 )  
Mrs.Sumathi Dandapani (R2 & 3 )

The Application having been heard on 16.6.97, the Tribunal on  
1st July 1997 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicants are casual labourers employed in the Southern Naval Command's Sailors Married Accommodation. They have rendered casual service for periods ranging from 5 to 15 years. Applicants 1 to 4 and 11 have been now denied employment. The applicants' grievance is that in spite of

their continued service for a long period, the respondents are adopting a policy of 'hire and fire' by denying engagement to the applicants at their will and pleasure while engaging outsiders and that they have not been paid the due wages and not considered for absorption on Group-D posts. As the applicants were not given the minimum wages which they were entitled to get as also wages on holidays and other benefits, they have preferred a representation to the 4th respondent, the Assistant Labour Commissioner(Central) on 30.11.1992 (Annexure-A3). Finding that there was no action on this representation, the applicants approached the Hon'ble High Court of Kerala filing O.P.No.1937/1993 praying for the following reliefs:-

- " (1) A writ of prohibition or any other appropriate writ, order or direction prohibiting respondents 1 to 3 from terminating the services or denying work to the applicants in the Maintenance Department.
- (2) Writ of Mandamus directing the respondents to renew their identity cards for entry in the I.N.S. Venduruthy so long as they are employed in the Maintenance Department of Sailors Married Accommodation INS Venduruthy,
- (3) To issue a writ of mandamus directing the respondents 1 to 3 to grant minimum wages to the applicants and
- (4) To issue a writ of mandamus directing the 4th respondent to conduct inspection and to do the needful to redress the grievance of the applicants. "

The High Court of Kerala though admitted the petition after final hearing dismissed the O.P. without going into the merits of the case and the Court held that it had no jurisdiction to entertain the case of the applicants in view of the provisions of the Administrative Tribunals Act,1985.

2. It is the case of the applicants that they were recruited by the respondents, that their service conditions are governed by General Order No.13 of 1981 of the Southern Naval Command and that therefore they are entitled for absorption in Group D posts.

3. Alleging that the respondents have denied the benefits legally due to the applicants, denied work and wages to applicants 1 to 4 and 11 after disposal of O.P.No.1937/93 and refused to take any action to regularise the applicants in Group D posts, the applicants have filed this application for the following reliefs:

- " (1) issue necessary direction to the respondents 1 to 3 to grant work and wages to the applicant continuously and grant all other service benefits legally due to them.
- (2) Declare that the applicants are entitled to be considered for absorption in Group D service taking into consideration their long continuous service as labourers.
- (3) Issue a necessary directions to the 4th respondent to take appropriate actions on Annexure A-3 and redress their grievances in accordance with law,
- (4) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and
- (5) Grant the cost of the Original Application."

3. The respondents in their reply contend that the applicants were engaged as casual labourers under the Quartering Committee of the Sailors Married Accommodation, that they have never rendered any service in connection with the affairs of the State, that they were paid from out of the subscriptions collected from the occupants of the Sailors Married Accommodation and not out of Government fund, that the Sailors Married Accommodation not being a department or office under the Government of India, there is no master - servant

relationship between the applicants and the Union of India, that the allegations regarding denial of work and engagement of outsiders are false, that the applicants are not entitled to any relief as claimed for by them and that this Tribunal has no jurisdiction to entertain the claim made by the applicants in this application as the same does not come within the purview of the Administrative Tribunals Act, 1985. They have also contended that General Order No.13 of 1981 has since been superseded by General Order No.1 of 1988 issued on 1st June, 1988. The respondents have further contended that since an industrial dispute is now pending before the Labour Court, Ernakulam as I.D.No.6/95(C) on the identical issue as in this case, the applicants should not have rushed to the Tribunal without waiting for an award being passed by the Labour Court.

4. We have carefully gone through the pleadings and the materials available on record.

5. Since the respondents have raised a plea that this Tribunal has no jurisdiction to entertain the claim of the applicants, we proceeded to hear the counsel on the preliminary point of maintainability. Shri Sugunapalan, learned counsel appearing for the applicants invited our attention to the allegation in this application that the Hon'ble High Court of Kerala has dismissed O.P.No.1937/93 filed by the applicants finding that the High Court has no jurisdiction to entertain the case in view of the provisions of the Administrative Tribunals Act, 1985 which is not denied by the respondents in their reply statement and argued that there is no basis for the preliminary objection. The finding of the High Court in O.P.No.1937/93 being binding on the parties, it is not

open for the respondents to raise the contention that the application is not maintainable before this Tribunal, argued Shri Sugunapalan. His further argument was that as the service conditions of the applicants are governed by the Southern Naval Command General Order No.13/1981 and Administrative Office Sailors Married Accommodation Standing Order, there is no merit in the contention of the respondents that the applicants have not been rendering service in connection with the affairs of the State.

6. We shall presently consider these arguments. It is not in dispute that the applicants had filed O.P.No.1937/93 before the High Court and that the same was dismissed finding that the High Court has no jurisdiction in view of the commencement of the Administrative Tribunals Act. The judgment in the above O.P. titled as Southern Naval C.C.E.Assn vs. Flag Officer Commanding in Chief has been reported in 1997(1) K.L.T.359. We have carefully gone through the above judgment of the High Court of Kerala. O.P.No.1937/93 was heard along with O.P. No.14066/1996. The prayers in O.P.No.14066/96 were for a writ of mandamus or other appropriate writ, order or direction directing the respondents to consider the petitioners for regularisation in the respective post of casual employees, a writ of mandamus or such other appropriate writ order or direction declaring that the petitioner is entitled to get work and wages with the respondents without any break and for issuing of a writ of mandamus or such other appropriate writ order or direction to respondents not to appoint or engage anybody as casual labourer under the establishment of the respondents till the petitioners and similarly placed persons included in the seniority list are fully engaged. It appears that it was understood by the Court that there was no

dispute that the petitioners before the High Court in both the cases were engaged or appointed to posts like peon, cleaners etc. in the Defence Services. After quoting Sections 14 and 15 of the Administrative Tribunals Act, 1985, the High Court observed as follows:

" Sub-clauses (a) & (b) specifically refer to 'any civil post' under the State. Therefore, the High Courts of Himachal Pradesh and Orissa are perfectly justified in holding that casual labourers do not hold civil posts as held by the two Supreme Court rulings mentioned above. At the same time, as far as the service matters of defence services are concerned, S.14(a) and S.14(b)(iii) refer only to a post connected with defence or in the defence services or a post filled by a civilian or a civilian appointed to any defence service or a post connected with defence. It cannot be disputed that the petitioners are being either engaged or appointed to posts like Peons, Cleaners, etc. in the defence services. It cannot also be disputed that they are civilians. Therefore, applying S.14 of the Act and the nature of the post held by the petitioner as a civilian employee in the defence services, there is no scope for holding that this Court has jurisdiction to deal with the cases relating to service matters of the petitioners."

(emphasis supplied)

It was on the basis of the above conclusion that the High Court held that it has no jurisdiction to entertain the case of the applicants as the jurisdiction of the High Court has been excluded by the provisions of the Administrative Tribunals Act. It appears that the question whether the applicants in this case who were petitioners before the High Court in O.P.No.1937/93 were in fact rendering service in connection with the affairs of the Union or of any State or any local or any authority within the territory of India or under the control of the Govt. of India or of any Corporation or Society owned or controlled by the Govt. of India or not, was not considered by the Court to decide whether the claim raised

by the applicants fell within the purview of the Administrative Tribunals Act or not, either for want of pleadings or may be due to the fact that the specific point was not brought to the notice of the Court. It is admitted in the pleadings in this case that the applicants are persons engaged on casual basis under the Quartering Committee of the Sailors Married Accommodation and that their wages are being paid from out of a fund raised by subscription collected from the occupants of the Sailors Married Accommodation and not from any Government funds. From the Southern Naval Command General Order No.13/81 (Annexure -A1), the Administrative Office Sailors Married Accommodation Standing Orders (Annexure A2) and Southern Naval Command General Order No.1/88(Annexure R 1), it is evident that the payment to the applicants and similarly situated others are made out of the non-Governmental fund collected by receiving subscriptions from the occupants of the Sailors Married Accommodation for the proper upkeep and maintenance of the premises. Though for the purpose of keeping the premises of the Sailors Married Accommodation in an orderly way, the Southern Naval Command had issued a General Order as to how the Sailors Married Accommodation should be properly maintained inter alia suggesting that certain persons could be engaged for doing the conservancy and other work meeting their expenditure from out of the subscriptions collected from the occupants of the Sailors Married Accommodation, we do not find that above said orders have created any posts in the defence services meeting the expenses from any Government funds so as to bring the persons employed pursuant to the order in the employment of the defence services. Paragraph 33 of the Southern Naval Command General Order No.13/81 (Annexure A1) reads as follows:

" 33. The funds will be utilised as follows:-

- (a) External conservancy and maintenance of common areas.
- (b) Employment of civilian employees such as clerk, sweepers labourers etc. provided these have not been authorised by the Govt.
- (c) Purchase of cleaning gear for the area.
- (d) Any other items required for the area for common use."

The clause (b) in paragraph 33 quoted above, clearly shows that employment of civilians such as clerk, sweepers, labourers etc. in the Sailors Married Accommodation by making payment out of the fund raised by the subscription of the occupants of the accommodation are for doing the work which have not been authorised by the Govt. It is abundantly clear from this that not only the payment is not made from the Govt. funds but also that the employment of civilians as clerk, sweepers and labourers making payment out of the fund are outside the Governmental business. The Central Administrative Tribunal has been created in accordance with the provisions contained in the Administrative Tribunals Act, 1985 for adjudication of disputes regarding matters enumerated in Section 14 of the Administrative Tribunals Act. Section 14 reads as follows:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal -(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

- (a) recruitment, and matters concerning recruitment, to any All India Service to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
  - (i) a member of any All India Service; or
  - (ii) a person (not being a member of an All India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
  - (iii) a civilian (not being a member of an All India Service or a person referred to in clause (c)

appointed to any defence services or a post connected with defence;

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

EXPLANATION - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section(3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporation (or societies).

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or societies) all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation (or society); and

(b) all service matters concerning a person (other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs. "

The applicants are seeking direction to respondents 1 to 3 to grant work and wages to the applicants continuously on the allegation that they have been continuously working in the Sailors Married Accommodation. They are also seeking a declaration that they are entitled for absorption in Group-D service. The above reliefs prayed for by the applicants do not relate to recruitment to any posts or service which are mentioned in clauses (a) and (b) of sub-section 1 of Section 14. They also do not relate to service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause(iii) of clause (b) of sub section (1) because continuous engagement and absorption are not sought on any posts or service under the Government but under the Sailors Married Accommodation on the basis of the service rendered in that organisation. The Sailors Married Accommodation is administered by a Quartering Committee which control and supervise the work of the applicants and makes payment to them from out of the funds collected by receiving subscription from the occupants of the Sailors Married Accommodation. Their services are liable to be terminated with the approval of the President of the Quartering Committee. Unless there is a relationship of master - servant between the Government and the applicants, the applicants cannot maintain an application before this Tribunal praying for a direction for engaging them continuously or for granting them the benefit of regularisation. The power of appointment, supervision of work, payment of wages, power to take disciplinary action and the power to terminate the services are some of the essential powers and attributes of an employer. In respect of the

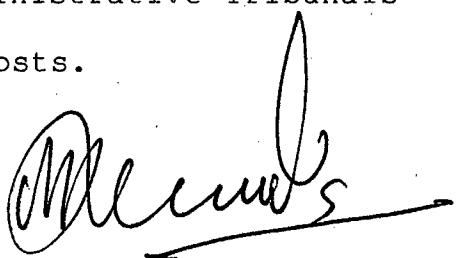
service of the applicants in this case, the Government of India or the Defence Services does not exercise any of the said powers. The said powers are exercised in respect of the applicants only by the Quartering Committee, Sailors Married Accommodation, I.N.S.Venduruthy headed by its President. Therefore, we are of the considered view that so long as the Quartering Committee is not any local body or other authority within the territory of India or under the control of the Government of India or any Corporation or Society owned or controlled by the Government of India duly notified under section 2 of Section 14 of the Administrative Tribunals Act, this Tribunal has no jurisdiction to entertain the claims of the applicants contained in this application. The dismissal of the O.P.1937/93 by the High Court finding that the High Court has no jurisdiction to entertain the grievance of the applicants in view of the provisions contained in the Administrative Tribunals Act having been rendered as a result of the real facts not being brought to the notice of the Court, does not enable the Tribunal to exercise jurisdiction in the matter in view of the provisions contained in the Administrative Tribunals Act, 1985.

7. Before parting with this case we wish to express our embarrassment and regret in that the applicants are being driven from pillar to post, the High Court saying that it has no jurisdiction and this Tribunal saying it has no jurisdiction. However we note with relief that while one of the prayers in the O.A. is for a direction to the 4th respondent to take an appropriate action on Annexure A3, the fourth respondent has already sent a failure report to the Government and on reference by the Government, an industrial

dispute is now pending between the parties before the Central Govt. Labour Court.

8. In the result, in the light of what is stated above, we are of the considered view that this Tribunal has no jurisdiction to entertain this application and therefore, we reject it under Section 19(3) of the Administrative Tribunals Act, 1985. There will be no order as to costs.

  
P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

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