

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.331/10

...Monday, this the 1st day of August 2011

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Indian Naval Canteen Service Employees' Union (Reg.no.07-62 of 1990), represented by its General Secretary, Thomas K.E., 53/228, Paliathara House, Maliakkal Road, Thevara P.O., Kochi – 13.
2. M.K.Prakasan, Senior Retail Executive (Accounts), Indian Naval Canteen Service, Naval Base, Kochi – 4.
3. G.Radhakrishnan, Retail Executive (Accounts), Indian Naval Canteen Service, Naval Base, Kochi – 4.
4. P.N.Chandrasekharan, Senior Retail Executive (Accounts), Indian Naval Canteen Service, Naval Base, Kochi – 4.
5. P.A.Alexander, Retail Executive (Accounts), Indian Naval Canteen Service, Naval Base, Kochi – 4.Applicants

(By Advocate Mr.S.Radhakrishnan)

V e r s u s

1. Union of India represented by Secretary, Govt. of India, Ministry of Defence, New Delhi.
2. The Chief of Naval Staff, Integrated Head Quarters, Ministry of Defence, Sena Bhavan, New Delhi – 110 011.

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3. The Chairman, Indian Naval Canteen Control Board, Integrated Head Quarters, Sena Bhavan, New Delhi – 110 011.
4. The General Manager, Indian Naval Canteen Service, Navy Nagar, Colaba, Mumbai – 400 005.
5. The Regional Manager, Indian Naval Canteen Service, Naval Base, Kochi – 4.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 26th July 2011 this Tribunal on 1st August 2011 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The Indian Naval Canteen Services Employees' Union and four others have filed this OA in respect of their grievance relating to revision of pay scale of the employees of the Indian Naval Canteen Services (INCS). Notice was issued to the respondents in this regard and in their reply, the respondents have raised the preliminary objection relating to the jurisdiction of the Tribunal to deal with the issue as according to the respondents, the applicants do not fall within the jurisdiction of the Central Administrative Tribunal. As such, the parties were heard on the point of jurisdiction.

2. Counsel for the applicant adverted to the decision of the Apex Court in the case of **R.R. Pillai vs Commanding Officer, Headquarters, Southern Air Command (U) (2009) 13 SCC 311**, whereby the Apex Court has held that the status of the employees of the Unit Run Canteen of the

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Armed Forces are not government employees and first attempted to distinguish the case of the applicants herein from those of the Unit Run Canteen. For this purpose and also to emphasize upon his point that the applicants could be treated as government servants, he has taken us through the following portion of the pleadings:-

- (a) Navy Instruction 60/1947 (Annexure A-1) which provided for the constitution of the Indian Naval Canteen Services which would be managed by a Central Board of Control consisting of the Chief of the Naval Staff, Naval Headquarters, the Chief of Personnel, Naval Headquarters, the Chief of Administration, Naval Headquarters; the Deputy Financial Adviser (N), Ministry of Finance Department, a representative from the Defence Department and the Deputy Director of Personnel Services, Naval Headquarters as Secretary. The constitution of the INCS was on an experimental measure.
- (b) Navy Instruction 14/75 (Annexure A-2) whereby the aforesaid INCS has been approved as a permanent basis with the Board of Control of the Chief of Personnel, the Director of Supply Branch, the Director of Personnel Services, the Dy. Director of Personnel, Representative of the Ministry of Finance (Defence), Representative of the Ministry of Defence (Navy) and an officer to be appointed by NHQ.
- (c) Navy Order No. 12/91 (Annexure A-3) which reflects that the INCS, framed and promulgated by the Indian Naval Canteen Control Board (INCCS) on behalf of Naval Headquarters is directly controlled by the Naval Headquarters.
- (d) Indian Naval Canteen Stores Regulations (Annexure A-4) which provides for the recruitment, conditions of service and other attendant aspects of the persons employed in ICNS (one of the terms being that the pay and allowances will be as laid down by the Board from time to time.) And also clause 5 of Indian Naval Canteen Service Constitution (Annexure A-28) which states that in the construction of the objects the term 'Naval Forces includes also all civilian Government servants employed with the Naval Forces and civilian employees of the Organization'. (The applicants are being sought to be brought within the term civilian employees of the Organization)

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(e) Order dated 12 March, 2010 conveying the sanction of the President of India to the deputation of a Naval Officer to INCS Organization as General Manager. This has been referred to, in order to hammer home the point that the entire control is by the officers of the Navy and deputation is approved by the Government.

(f) Regulation No. 2801 of the Navy Regulations.

(g) Judgment dated 24 April, 2008 in W.P. No. 2221 of 2003 wherein the Hon'ble High Court has held as under :-

The question which arises before the Court is not res integra and stands concluded by the judgment of the Supreme Court in Radhu K Kakde Vs. Union of India, (1986) 1 SCC 400. The issue which fell for determination before the Supreme Court, was the correctness of the view taken in the judgment of a Division Bench of this Court to the effect that the Canteen Stores Department is an establishment engaged in an industry carried on by or under the authority of any department of the Central Government and falls, within the purview of the exemption enacted by Section 32 (iv). After examining the history, the origin and organizational structure of the establishment, the Supreme Court held as follows :

"In the light of all these facts pertaining to the history, organizational structure, exercise of functional control by governmental authorities and the special nature of service rendered by it to the defence forces of the country, we have no hesitation to hold that the High Court was clearly right in holding that the Canteen Stores Department (India) is an 'establishment' engaged in an industry carried on by or under the authority of a department of the Central Government namely the Ministry of Defence."

Counsel appearing on behalf of the petitioner stated that though the aforesaid decision was rendered in the context of the Army Canteen Services, the Naval Canteen Service has the same organizational structure and its functioning is controlled by the Central Government. The submission requires to be accepted and the issue which is raised in these proceedings is clearly covered by the judgment of the Supreme Court. In view of the judgment of the Supreme Court, it would have to be held that the Indian Naval Canteen Service is an establishment engaged in an industry carried on by or under the authority of a department of the Central Government.

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(h) Order dated 07-02-1997 (Annexure A-6) issued by the Administrative Tribunal Goa in Sales Tax 2nd Appeal Nos. 2 to 7/94, filed by the Indian Naval Canteen Service, wherein a finding has been rendered as under :-

"As far as the facts go, there is no dispute raised on behalf of the respondent that the Appellant is part and parcel of the Union of India and the goods which were purchased by the Appellant from the open market were meant to be sold to the members of the Armed Forces."

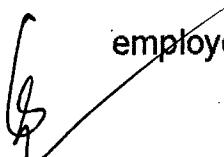
(i) Para 2(d) of letter (Annexure A-7) dated 04 June 1998 regarding revision of pay scales of INCS employees, various allowances being identical to the rates applicable to Government employees.

(i) Appendix B to the Minutes of the INCCB Meeting held on 22 May 1998 (Annexure A-13) regarding the revised allowance to the INCS employees wherein it has specifically been stated, *"as and when rate of DA is revised for Central Govt. Employees, such revision will also be applicable to the INCS Employees."*

3. Counsel for the respondents have invited our attention to the decision of the Hyderabad Bench in OA NO. 1253 of 2001 (order dated 04-10-2001) wherein it has been held as under :-

" Since the service conditions of INCS employees are governed by the regulations framed by the INCCB, and the employees are not governed by the Fundamental Rules, even assuming that these employees can be treated as Government servants, they would not be entitled to the benefit of enhancement of retirement age on par with the Central Government employees. As long as the employees of INCS are not governed by the Fundamental Rules, they cannot be treated as Central Government employees and they are not entitled to the benefit of enhancement of retirement age from 58 to 60 years on par with the Central Government employees."

4. He has also stated that even in the letter of appointment there is no inkling that the applicants would be equated with any government employees. Counsel for the respondents also referred to certain



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documents to state that even on earlier occasions, there was no pay parity between the employees of the INCS and the Central Governments when the III, IV or V Pay Commission Recommendations were made and pay revised.

5. In rejoinder to the same, the counsel for the applicant referred to the following orders of the Hyderabad Bench wherein the grievances were considered though the OA rejected. The applications were not dismissed on account of jurisdiction and these two orders i.e. Order dated 13-10-2006 in OA No. 430 of 2006 and Order dated 08-10-2007 in OA No.399 of 2007. These were in posterior to the order cited by the counsel for the respondents. Further, in so far as consideration of parity with government employees, the counsel for the applicant, denying the submission of the counsel for the respondents that the earlier Pay Commission Recommendations have not been extended to the applicants, referred to the Minutes of the Annual Meeting of the INCCB held on 15-11-2007 (Annexure A-18) wherein GM's proposal for setting aside Rs one Crore from profits of FY 2007-08 to meet the contingency of matching benefits to INCS employees as was done for IV & V CPC, was deliberated upon.

6. Arguments were heard and documents perused Section 14 of the Administrative Act 1985 relates to jurisdiction, powers and authority of the Central Administrative Tribunal and the same reads as under :-

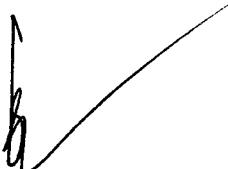
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"14. Jurisdiction, powers and authority of the Central Administrative Tribunal. — (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers 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 or 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.

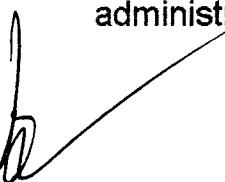
Explanation. — For the removal of doubts, it is hereby declared that references to 'Union' in this sub-section shall be construed as including references also to a Union territory.

7. The question here is whether the applicants hold any post connected with defence or in the defence services, being, in either case, a post filled by a civilian so as to be brought within the purview of Sec 14 of the A.T. Act, 1985.



8. To hammer home his point, the counsel for the applicant stressed the fact that the persons employed in INCS belong to Naval Forces (see Regulation No. 5 at Annexure A-28). He has also invited our attention to the decision of the Mumbai High Court wherein they were equated with the employees of the C.S.D. Canteens (who are treated as Government servants). And, to substantiate his contention he has referred to the two decisions of the Hyderabad Tribunal. In fact, the two decisions of the Hyderabad Bench cannot be held to be one of any decisions to confirm that the persons employed in INCS could be brought within the ambit of the provisions of A.T. Act, for in these cases the question was not raised. In fact, had the Hyderabad Bench kept in view its own decision referred to by the counsel for the Respondents vide Annexure R-2 order dated 04-10-2001 in OA No. 1253 of 2001 and arrived at a different view, the order would have been of some assistance to the applicants. For, order in OA 1253 specifically dealt with the jurisdiction aspect and it had been held that the INCS employees are not subject to the CAT jurisdiction.

9. Independent of the above, if the case is considered, for falling under any of the categories mentioned in Section 14, the parameters are –
(a) payment to the holders of posts by way of remuneration should be from the Government source (consolidated fund of India) and (b) the administrative control should be with the Government. By a number of references, the counsel could establish that the persons are under the full administrative control of the Chief of the Naval staff. That part is



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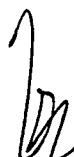
thoroughly fulfilled. However, in so far as the other requirement is concerned, the counsel fairly conceded that the applicants are not paid from the Consolidated Fund of India.

10. In **Union of India vs Chotelal, (1999) 1 SCC 554**, while dealing with the case of Dhobis employed in the National Defence Academy, Khadakvasla the Apex Court has held as under:-

"6. In view of the characters of the Regimental Fund as discussed above, we have no hesitation to come to the conclusion that the said Fund cannot be held to be a public fund by any stretch of imagination and the dhobis paid out of such Fund cannot be held to be holders of civil posts within the Ministry of Defence so as to confer jurisdiction of the Central Administrative Tribunal to issue directions relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence."

11. In **Mohd. Aslam ()** it was initially held that the employees of the Unit Run Canteens are Government employees. However, in a latter decision in the case of **R.R. Pillai vs Commanding Officer, Headquarters, Southern Air Command (U), (2009) 13 SCC 311**, the Apex Court has held otherwise. The Apex Court in the case of R.R. Pillai (supra) held as under:-

"9. In Aslam case a Bench of this Court proceeded on incorrect factual premises inasmuch as after noticing that URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that URCs are funded by CSD as well as the articles were supplied by CSD. Unfortunately, it did

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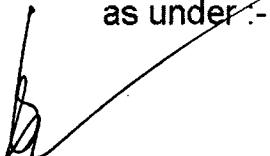
not notice that no such funding is made by CSD. Further, only refundable loans can be granted by CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other non-public funds."

12. Again, it took note of the fact that the '*profits generated from URCs are not credited to the Consolidated Fund, but are distributed to the non-public funds which are used by the units for the welfare of the troops'*'.

13. Of course, the counsel for the applicant is right when he stated that there is a statutory obligation to have canteen facilities to the naval personnel as a part of their service condition and the applicants fulfil that obligation. However, this by itself cannot make them to be treated either as Government servants or persons holding civil post.

14. The rules of recruitment and those governing the other service conditions are not ones promulgated under the provisions of proviso to Art. 309 of the constitution of India.

15. In our considered opinion, the above view is fortified by the decision of the Apex Court in the case of **Kanak Chandra Dutta (AIR 1967 SC 884)** which has been referred to in a comparatively recent decision in the case of **Union Public Service Commission vs Girish Jayanti Lal Vaghela (2006) 2 SCC 482** wherein the Apex Court has held as under:-

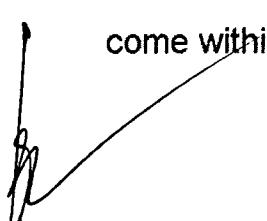
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State of Assam v. Kanak Chandra Dutta. In this case the respondent who was a Mauzadar in the Assam Valley was dismissed from service in disregard of the provisions of Article 311(2). It was held that "having regard to the existing system of his recruitment, employment and functions", he was "a servant and a holder of a civil post under the State", and therefore entitled to the protection of Article 311(2). This Court observed :

"A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person [said to be] holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

16. In the case in hand, as the spinal aspect of payment of wages not being from the Consolidated Funds of India, we are of the considered view that the case of the applicants cannot be coming under the jurisdiction of this Tribunal. Further their recruitment rules are not under the proviso to Article 309 nor has the INCS been a notified institution under the provisions of the Act.

17. Thus, considering from any angle, it is seen that notwithstanding the fact that Hyderabad Bench in the later cases passed orders on merits, we are in respectful agreement with the order dated 10-12-2001 in OA No. 1253 of 2001 wherein it has been held that the INCS employees do not come within the purview of the A.T. Act, 1985.



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18. The OA is, therefore, dismissed due to lack of jurisdiction. We confirm that we have not dealt with the merits of the matter.

(Dated this the 1st day of August 2011)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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