

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. Nos. 609/1994, 987/1994, 1082/1994, 1097/1994,
1441/1994, 1611/1994, 1734/1994, 63/1995 & 396/1995.

Wednesday, this the 15th day of November, 1995

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR S P BISWAS, ADMINISTRATIVE MEMBER

O.A. 609/1994

- 1 Aysha Beevi, W/o Nooruddeen,
Wash Woman, Departmental A Type Tiffin Room,
O/o the T.D.M, Quilon.
 - 2 Charles D'cruz, S/o Andrews,
Tea Maker, Departmental A Type Tiffin Room,
O/o the T.D.M. Quilon.
- ... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs.

- 1 The Telecom District Manager, Quilon.
- 2 The Chief General Manager,
Telecommunication, Kerala Circle,
Trivandrum.
- 3 The Director of Canteens, Department of
Personnel & Training, Ministry of Personnel
and P.G & Pension, Sastry Bhavan, New Delhi.
- 4 Union of India represented by Secretary
to Government, Ministry of Communication,
New Delhi.

... Respondents

(By Advocate Mr S Radhakrishnan, Addl.CGSC)

O.A. 987/1994

- 1 Sasidharan Pillai K, S/o Karunakaran Pillai,
Tea Maker, Postal Employees Canteen,
Quilon H.O.
 - 2 N Sivarajan, S/o Nanu Pillai,
Wash Boy-cum-Bearer, Postal Employees
Canteen, Quilon H.P.O.
- ... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs.
The Chief Post Master General,
Kerala Circle, Trivandrum.



- 2 The Senior Superintendent of Post Offices,
Quilon.
- 3 The Union of India represented by Secretary
to Government, Ministry of Communication,
Department of Posts, New Delhi.
- 4 The Secretary, Postal Employees Canteen,
Quilon H.P.O. ... Respondents

(By Advocate Mr T R Ramachandran Nair, Addl.CGSC)

O.A. No.1082/1994

- 1 N Musthafa, S/o K Syed Mohammed Koya,
Manager (DW) (Daily Worker),
Secretariat Canteen, Kavaratti.
- 2 M C Ubaidulla, S/o Maida,
Bearer, Secretariat Canteen, Kavaratti.
... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Administrator, Union Territory of
Lakshadweep, Kavaratti.
- 2 The Accounts Officer,
Administration of Union Territory of
Lakshadweep, Kavaratti. ... Respondents

(By Advocate Mr M V S Nampoothiri (represented)).

O.A. No.1097/94

- 1 P Manikandan, S/o Pazhaniappan,
Salesman, Tiffin Room, Head P.O.,
Palakkad.
- 2 M Rajan, S/o Mundan, Wash Boy,
Tiffin Room, Head P.O., Palakkad. ... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Chief Post Master General,
Kerala Circle, Trivandrum.
- 2 The Senior Superintendent of Post Offices,
Palakkad.
- 3 The Director of Canteen, Department of
Personnel and Training, Room No. 707,
Nirvachan Sadan, Ashok Road, New Delhi.
... Respondents

(By Advocate Mr T P M Ibrahim Khan, Sr. CGSC)

O.A. No.1441/1994

- 1 K Sukumara Pillai, S/o Kumara Pillai,
Bearer, Railway Mail Service Canteen,
Trivandrum.
- 2 V Sasikumaran Nair, S/o Velayudhan Pillai,
Cook, Railway Mail Service Canteen,
Trivandrum.
- 3 K Venugopalan Nair, S/o Kumara Pillai,
Cook, Railway Mail Service Canteen,
Trivandrum. ... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Union of India, represented by
Secretary to Government of India,
Department of Posts, New Delhi.
- 2 The Chief Post Master General,
Kerala Circle, Trivandrum.
- 3 The Senior Superintendent of Railway
Mail Service, Trivandrum. ... Respondents

(By Advocate Mr C Kochunni Nair, Sr. Panel Counsel(Represented).)

O.A. No.1611/1994

P Rajendran, S/o Purushothaman,
Dish Cleaner, Postal Tiffin Room,
Tiruvalla Head Post Office. ... Applicant

(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Senior Superintendent of Railway
Mail Service, Trivandrum Division,
Trivandrum.
- 2 The Superintendent of Post Offices,
Tiruvalla.
- 3 The Post Master, Head Post Office,
Thiruvalla.
- 4 The Chief Post Master General,
Kerala Circle, Trivandrum. ... Respondents

(By Advocate Mr Varghese P Thomas, Addl .CGSC)

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O.A. No.1734/1994 ✓

- 1 V Sasidharan Nair, S/o Velayudhan Pillai,
Cook/ Halwai, General Post Office Canteen,
Trivandrum.
 - 2 Thulaseedharan Nair P, S/o Ponnappan Pillai,
Wash Boy, General Post Office Canteen,
Trivandrum.
 - 3 V Vijayan, S/o B Ambujakshi, Bearer,
General Post Office Canteen,
Trivandrum.
- ... Applicants

(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Union of India represented by
Secretary to Government, Ministry of
Communications, Department of Posts,
New Delhi.
 - 2 The Chief Post Master General, Kerala Circle,
Trivandrum.
 - 3 The Senior Superintendent of Post Offices,
Trivandrum.
 - 4 The Post Master, Thycaud Head Post Office,
and Chairman, Postal Tiffin Room, Thycaud.
 - 5 The Director of Canteens, Department of
Personnel and Training, New Delhi- 110 001.
- ... Respondents

(By Advocate Mr P R Ramachandra Menon, Addl.CGSC(represented))

O.A. No.63/1995 ✓

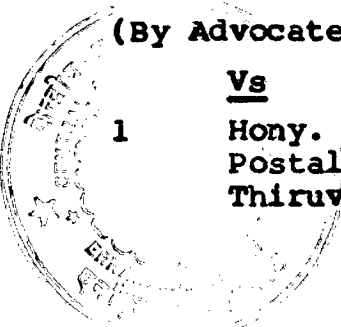
- 1 K Sureshkumaran Nair, Bearer,
Postal Circle Office Staff Canteen,
Thiruvananthapuram- 33.
 - 2 G Jayan, Halwai, Postal Circle Office,
Staff Canteen, Thiruvananthapuram- 33.
 - 3 K P Sadasivan Nair, Tea - Coffee Maker,
Postal Circle Office Staff Canteen,
Thiruvananthapuram-33.
 - 4 C Divakaran Nair, Wash Boy,
Postal Circle Office Staff Canteen,
Thiruvananthapuram - 33.
 - 5 K Suresh Kumar, Bearer,
Postal Circle Office Staff Canteen,
Thiruvananthapuram- 33.
- ... Applicants

(By Advocate Mr G D Panicker (represented)).

Vs

- 1 Hony. Secretary/Welfare Officer,
Postal Circle Office Staff Canteen,
Thiruvananthapuram.

... 5/-



- 2 The Chief Post Master General, Kerala Circle, Thiruvananthapuram.
- 3 The Director General, Department of Posts, Dak Bhavan, New Delhi.
- 4 The Director (Canteens), Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, New Delhi.
- 5 Union of India, represented by its Secretary, Ministry of Communications, New Delhi.
- 6 The Secretary, Ministry of Finance, Department of Economic Affairs, Government of India, New Delhi. ... Respondents

(By Advocate Mr T P M Ibrahim Khan, Sr. CGSC)

O.A. No. 396/1995 ✓

- 1 R Rajasekharan Nair, S/o Ramakrishna Pillai, Tea Maker, Postal Tiffin Room, Thycaud Head Post Office.
- 2 A Rajendran, S/o Ayyappan Pillai, Dish Cleaner, Postal Tiffin Room, Thycaud H.P.O. ... Applicants

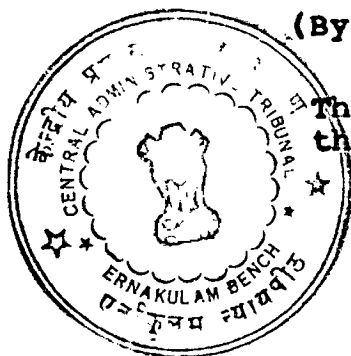
(By Advocate Mr M R Rajendran Nair)

Vs

- 1 The Union of India represented by Secretary to Government, Ministry of Communication, Department of Posts, New Delhi.
- 2 The Chief Post Master General, Kerala Circle, Trivandrum.
- 3 The Senior Superintendent of Post Offices, Trivandrum.
- 4 The Post Master, Thycaud Head Post Office and Chairman Postal Tiffin Room, Thycaud.
- 5 The Director of Canteens, Department of Personnel & Training, Asoka Road, New Delhi- 110 001. ... Respondents

(By Advocate Mr P R Ramachandra Menon, Addl. CGSC (represented))

These applications having been heard on 15th November 1995, the Tribunal on the same day delivered the following:



ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicants before us seek different benefits, based on an order of the Government of India No.12/5/91-Dir(C) dated 29.01.92 produced as A3 in O.A. 609/94, for short called 'the order' hereinafter. For example in O.A.63/95 and O.A.609/94, the main prayer is for a declaration that applicants are Group 'D' employees while in O.A.1097/94 and O.A.987/94 a declaration that applicants are entitled to continue is sought. Applicants in O.A.1082/94 and O.A.1611/94 seek a declaration that they are liable to be treated as Government servants, while the applicants in O.A.1441/94, O.A.1734/94 and O.A.396/95 seek a declaration that the condition of registration imposed is illegal. Other ancillary reliefs are also sought.

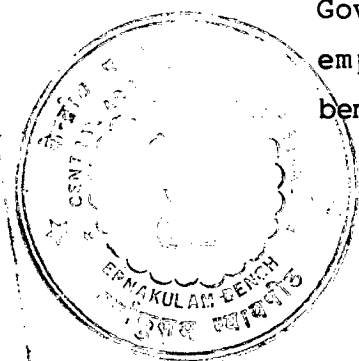
2. The order was issued pursuant to the decision of the Supreme Court in M.M.R.Khan and others vs. Union of India and others, 1990 Supp.SCC 191 and related cases, wherein canteen employees had approached the Supreme Court, praying that they be treated as Government employees. The Supreme Court held:-

" The workers engaged in the statutory canteens, as well as those engaged in non-statutory recognised canteens in the Railway Establishments are Railway employees, and they are entitled to be treated as such ... they would be entitled to all the benefits as such Railway employees with effect from the said date"

In the order under reference, the Government stated:

".... consequent on the said judgment employees of non-statutory departmental/ cooperative canteens/ tiffin rooms located in Central Government offices should be treated as Government servants with effect from 1.10.1991. The employees of these canteens may therefore be extended all benefits as are available to other Central Government

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employees of comparable status from 1.10.91 except GPF, Pension"

3. The pleadings on both sides are vague. Neither applicants, nor respondents have come into focus regarding the vital issues namely:

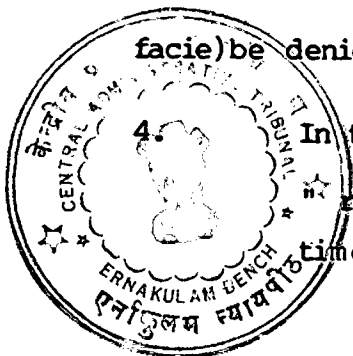
- (a) whether applicants are Government employees or are only comparable to Government employees .(Khan's case is clear about railway canteens).
- (b) whether the Government of India or one of its departments can incorporate conditions of eligibility , like registration for grant of the benefits declared admissible by the Supreme Court.
- (c) if it can, whether conditions have been prescribed in exercise of any statutory power; or otherwise,
- (d) Assuming that there is power and conditions have been prescribed , whether guidelines are prescribed.

As we noticed, the pleadings leave much to be desired. At one place, the respondents say:

"canteen workers are entitled to be treated as government employees with effect from 1.10.91 , while elsewhere they say that they have decided to stop registration after 11.10.91.

A power is always coupled with a duty and no power can be exercised arbitrarily. If registration is a pre-condition for getting the benefits declared admissible by the Supreme Court, it may not be open to the Registering authority, to exercise its power in such a way as to defeat the declaration of law by the Apex Court . If benefits are "available from 1.10.91(A3)", they cannot (prima facie) be denied from 11.10.91, by stopping registration.

4. In the reply statement in O.A.63/95(R.2(b)), it is stated: "request for registration of canteens" received for the first time after 11.10.91 shall not be considered."



5. All that one can say with certainty in the state of pleadings is only that the Supreme Court has extended certain benefits to a class of persons, and that by A.R2 in OA 63/95, the Government of India have virtually decided not to grant registration, which according to them is a pre-condition for getting the benefit of the Supreme Court decision. As we have already noticed, the nature of pleadings are not sufficient to take a decision on the important issues. We are not told whether a condition like registration can be imposed. If it is possible, we are not told of the details of the order governing registration, or who is to apply for registration (whether the department, or the management of the canteen or the employees) and who is to grant it. Apart from making vague allegations regarding the necessity for registration, respondent Government of India has not referred to any specific power. No rule/instruction is produced, either.

6. A matter of such importance, affecting many persons cannot be left undecided, or in a nebulous state. As matters now stand, we can only declare that employees in non-statutory departmental/cooperative canteens/tiffin rooms located in Central Government offices should be treated as Government servants with effect from 1.10.1991 in the light of the decision in M.M.R.Khan's case and the order.

7. If there is need for registration, the scheme/rules governing registration will be communicated by the Government of India to all Heads of Departments within the Kerala State and Lakshadweep (falling within our territorial jurisdiction) and they in turn will cause these to be made available to all subordinate offices under them. This will be done within a period of thirty days from today. Within thirty days thereof, those desirous of

- (a) the source of authority for ordering registration,
- (b) scheme or rules governing registration,
- (c) person to order registration, and,
- (d) guidelines governing the matter,

will be settled by this direction. The directions of the Apex Court will have to be implemented in the spirit in which they are made.

We dispose of the applications with the aforesaid directions.

Dated the 15th November, 1995.

CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

Date 24.11.95