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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.377/87

Baburao Keshav Gaikawaiwari,
103, Ram Ali, Sirur,
Dist.Pune.

.. Applicant

vs.

1. Union of India
through
The Secretary,
Ministry of Communications,
New Delhi.
2. The Director General
Posts and Telegraphs
New Delhi. .
3. The Presidency Postmaster,
Bombay G.P.O.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.C.V.Nathan
Advocate for the
Applicant.
2. Mr.V.M.Pradhan
for Mr.P.M.Pradhan
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 3-6-1991
(Per U.C.Srivastava, Vice-Chairman)

The applicant who was ~~an~~ employed as Cash and Stamp vendor by the Contractor working in the GPO Bombay was later on absorbed in government service. Prior to absorption of the applicant and other persons the prevailing system was that this cash and stamp vending was given to the private contractors under some terms and conditions by the government and they used to employ~~ee~~ these people as vendors. Later on in the year 1952 the stamp vending departments at Pune GPO and Bombay were taken ^{over} by the Government. The cash department was taken ^{over} by the government directly under them in the year 1965 and thereupon the applicant and other persons serving under the contractor were

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absorbed in the postal service.

2. From the written statement ^{of the respondents} it appears that one of the conditions of the absorption was that such employees would be appointed in the Post and Telegraph department as a fresh recruit from the date of departmentalisation of the said work i.e. from 1-12-1965 and their service under the Government of India would be counted for all purposes including pension from 1-12-1965.

3. The applicant has not filed any rejoinder or any document controverting the ^{said} said averment made in the written statement. The applicant was granted invalid pension from 3-7-1981. By means of this plaint the applicant has prayed that he may be granted pensionary benefit with effect from the date he became the employee of the contractor and the entire period should be counted for pensionary benefits.

4. When the applicant entered the service of the GPO he knew that he was an employee of the contractor for doing this job for the contractor. He was aware that by this absorption he will not get any benefit of past service with the contractor. Obviously this absorption was a boon for applicant and other similarly placed employees who became employees of the Government and entitled to the benefits ~~of~~ ^{were} the government servants entitled to.

5. Counsel for the applicant strenuously contended that the applicant is entitled to all such benefits in view of the fact that he has worked in the said department may be with the Contractor who had contracted with the government for doing

the governmental work itself. May it be so when the government resorted to contract system it was a matter between the government and the contractor and the employees of the contractor ab initio are not to be employees of the government. The government also did not intervene in the matter earlier and did not grant any concession and gave any direction through the contractor or given them a particular pay scale or any other benefits which could have been given to a government servant or a quasi-government servant.

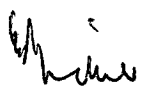
6. The learned counsel for the applicant cited the judgment of the Supreme Court in KANPUR SURAKSHA KARMCHARI UNION(REGD) v. THE UNION OF INDIA & OTHERS, 1988 (2) SCALE 431 in which case the Supreme Court held that the workmen who were working in canteens established under section 46 of the Factories Act, 1948 in Ordnance Equipment Factory, Kanpur, Central Ordnance Depot, Kanpur and Air Force Station Kanpur were entitled to claim the period of service in such canteens prior to 22.10.1980 as part of the qualifying service for claiming pension. In the said judgment it has been clearly stated that there are three kinds of canteens viz. (i) canteens run by contractors, (ii) canteens run by co-operative societies of the staff, and (iii) canteens which had been established under Section 46 of the Act and the Court was concerned with the third category and not with the first two categories. In that case it was pointed out that the canteens are established under the statutory provision under section 46 of the act, and government also intervened ^{an} and issued an order in the matter of pay scales, conditions of service etc. to the employees like those government servants. In the matter of pay and other matters the provisional control remained with the


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government. The position of the employees under Section 46 of the Factories Act shall ^{be} distinct ^{from} ~~with~~ employees of contractor with the government department.

~~xxxxxxxxxxxx~~ The observation of the Supreme Court in this case to the effect so far as other canteens are concerned will not help the applicant in this case in view of the fact that the applicant is ^{under} employed by a contractor and absorbed ^{under} certain terms and conditions and cannot claim any pensionary benefit ⁱⁿ during the period they were not government servants. However, as the applicant had served the postal department, may be employed through the contractor, and the applicant had approached the government, the government can consider the case like which it has been granted to those who were in government service or those who prior to ~~the~~ becoming government servants though they were taken in service consequently.

7. With the above observation this application is dismissed. There will be no order as to cost.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman