

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~

NEW BOMBAY BENCH

O.A. No. 280 of 1987.
T.A. No. 1987.

DATE OF DECISION 4.12.1987.

SHRI RAM BABU JHUNI RAM Petitioner

SHRI B.M.MASURKAR Advocate for the Petitioner(s)

Versus

THE GENERAL MANAGER, CANTEEN STORES Respondent
DEPARTMENT, BOMBAY - 400 020.

SHRI M.I.SETHNA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.GADGIL, VICE-CHAIRMAN

The Hon'ble Mr. J.G.RAJADHYAKSHA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? y3
2. To be referred to the Reporter or not? - y3
3. Whether their Lordships wish to see the fair copy of the Judgement? - m
4. Whether it needs to be circulated to other Benches of the Tribunal? - m

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

TRANSFERRED APPLICATION NO.280/87.

Shri Ram Babu Jhuni Ram
21/23, O/R Flats,
Gurudwara Road,
Navy Nagar, Colaba,
Bombay-400 005.

Applicant
(Original Petitioner)

V/s

1. The Union of India
2. The General Manager
Canteen Stores Department,
119 Maharshi Karve Road,
Bombay - 400 020.

Respondents
(Original Respondents)

Coram: Hon'ble Vice Chairman B.C.Gadgil
Hon'ble Member (A) J.G.Rajadhyaksha

Appearances:

1. Shri B.M.Masurkar
Advocate for the applicant.
2. Shri M.I.Sethna
Counsel for the
Respondents.

JUDGMENT

4.12.1987.

(Per: B.C.Gadgil, Vice Chairman)

Writ Petition No.377/82 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision. Though in the application a number of contentions have been raised it is not necessary to consider all of them as the matter can be conveniently decided by answering the question as to whether the Canteen Stores Department (India) has been a Government Department since before 1977. To understand this controversy it would be necessary to refer to certain facts and pleadings of the authorities.

2. The applicant (original writ petitioner) joined service with the Canteen Stores Department (India) on 8.5.1972 as Manager (Gr.I)/Section Officer. The panel drawn for the selection of the applicant and other persons on 8th April, 1972 is at Exhibit 'A' to the compilation. This appointment was made in terms of the Recruitment Rules at Annexure 'N' to the

rejoinder of the applicant. The applicant was confirmed in the above post on 8.5.1974 (vide Annexure 'B' to the application). The applicant was placed at Serial No.13 amongst those confirmed employees. Till 1977 the funds of the said Canteen Stores Department (India) were separate and they did not form part of the Consolidated Fund of India. The Public Accounts Committee recommended that such funds should be merged with the Consolidated Fund of India. Accordingly, a decision was taken to make such merger of funds with effect from 1.4.1977. On 1.2.1977 the Department informed the applicant about this contemplated merger of the funds and that the present organisation viz., the Canteen Stores Department (India) would be known as Canteen Stores Department. The letter gave an option to the applicant to decide as to whether he was ready and willing to continue his employment in the Canteen Stores Department. Government then made a resolution (vide Exhibit 'G' to the application) dated 31.3.1977. It reiterates its decision to merge the Canteen Stores Department (India) Funds with the Consolidated Fund of India and then states that the employees who have not opted to go out of the organisation would hold their respective posts and on the same terms and conditions, subject to the Recruitment Rules that would be framed. The applicant did not opt to go out and hence he continued with the organisation. On 19.6.1978 he was allowed to cross Efficiency Bar. The Government framed new rules known as Canteen Stores Department, Ministry of Defence (Group 'A' and Group 'B' posts) Recruitment Rules 1979. Rule 3(1)(i) and (ii) are under dispute. It reads as follows:-

"Rule 3.(1) Initial Constitution. - (i) Records of all Group 'A' and Group 'B' officers as were working in the Canteen Stores Department on 1st April 1977 will be examined by a Selection Committee

will

to be presided over by the Chairman or a Member of the Union Public Service Commission and containing at least two representatives of the Ministry of Defence. Such of the Officers as are found fit will be appointed to the same posts which they were holding in Canteen Stores Department on substantive basis on the above date at the initial constitution.

(ii) The persons referred to in sub-rule (i) above who were not found fit for the substantive posts they were holding on 1st April, 1977 shall continue to hold the posts they were appointed on substantive basis and for this purpose, these posts shall be deemed to have been excluded from the respective grade as given in the Schedule for so long as they are not found fit to hold such posts. Records of such persons will be periodically reviewed at least once in a year by the Selection Committee as mentioned in sub-rule (i) above for appointment to the respective posts and on their having been found fit, their respective seniority in the posts, selected for shall be decided in consultation with the Union Public Service Commission."

3. It appears that the Selection Committee has been constituted when the above rules were framed and the applicant was not found fit to be given a substantive post with effect from 1.4.1977. However, he was found fit later i.e. with effect from 1.4.1978. Consequently, some of his juniors were upgraded in the substantive posts with effect from 1.4.1977 and in the seniority list after 1978 the placement of the applicant was placed at serial No.31. Under the old seniority list of the Confirmed Manager (Gr.I) the applicant's placement was at Serial No.10, (in course of time his placement had improved

from 13 to 10). The applicant made representations in this respect. However, they were of no use and hence he filed the Writ Petition in question. The applicant's contention is that the Canteen Stores Department (India) was an organisation owned and controlled by the Government of India and that the management of the department was under the Defence Ministry. All the employees were getting pay according to the IInd and IIIrd Pay Commission Reports and the classification of the employees as Grade I and Grade II was also the same as that of the Government of India employees. The applicant contends that mere merging of the funds of the Department with the Consolidated Fund of India should not and could not prejudicially affect his position in service. According to him, the rules of 1973 were also framed by the President of India and that he was confirmed in the post on 8.5.1974 in terms of those rules of 1973. According to the applicant, Rule 3(1)(i) and Rule 3(1)(ii) are bad as they contemplate a fresh selection of the employees of the Canteen Stores Department (India) and a fresh appointment if those employees were found fit by the Selection Committee. The rules 3(1)(ii) has provided that those employees found not fit for substantive post would continue to hold their substantive posts, however such posts shall be deemed to be excluded and remain excluded from the sanctioned strength so long as such employees were found not fit to hold the post. The applicant's grievance was that though he was confirmed in the post of Manager (Gr.I) in 1974, the rules of 1979 contemplated a fresh process of confirmation and that this is not permissible. He contended that on account of the above mentioned impermissible process he was confirmed not with effect from 1.4.1977 but with effect from 1.4.1978. This has resulted in pushing down his seniority from Serial No.10 to No.31. In the rejoinder, the applicant has raised some other contentions about the main-

tenance of a roster for Scheduled Castes / Scheduled Tribes personnel and the irregularity in the selection process under the 1979 rules. Of course, those contentions have been raised without prejudice to his contentions that action under 1979 rules is bad.

4. The respondents filed their reply. The main contention of the respondents is that the Funds of the Canteen Stores Department (India) were independent and did not form part of the Consolidated Fund of India and that on recommendations of the Public Accounts Committee these funds were decided to be merged with the Consolidated Fund of India with effect from 1.4.77. It was contended that the Canteen Stores Department (India) was an Autonomous Undertaking and was not a regular Government Department before 1977. A new service viz., the Canteen Stores Department has come into existence so as to form part of the Government service after 1977. For such a new service, Rules of 1979 were framed and that under the impugned rules 3(1)(i) and 3(1)(ii) it was prescribed that the employees under the old service would be regularised if they were found fit by the Selection Committee. It was then averred that the applicant was not found to be fit for absorption in the substantive post of Manager (Grade-I) with effect from 1977 while others were so found fit. However, the Selection Committee later found the applicant fit and accordingly he got his placement in seniority with effect from 1978 and not from 1977.

5. Thus the main contentions of the respondents are that prior to 1977 the Canteen stores Department (India) was a service run by an independent autonomous body and that the employees working under such autonomous body

were given an option to join the new service from 1.4.1977 and that it was quite legal and proper for the Government to incorporate rule 3(1)(i) and 3(1)(ii) for the purpose of deciding as to whether the employees of the erstwhile autonomous body should be taken on regular basis.

6. In view of the following decisions of the High Court and Supreme Court it would not be open for the respondents to contend that before 1.4.1977 the Canteen Stores Department (India) was a separate organisation not forming part of the Government Department. Miscellaneous Petition No.606 of 1967 was filed in the High Court of Bombay by one Chand Suri who was working with the Canteen Stores Department, who was asked to retire on 3rd November, 1967 from service on his attaining the age of 55 years and in whose case it was directed that a communication in that respect should be treated as notice under para 4 of Canteen Stores (General Order) No.33, challenging the orders. The grievance of the employee was that he was governed by Article 459 of the Civil Services Regulations and that the premature retirement under Canteen Stores (General Order) No.33 was bad. For deciding this dispute it was necessary to find out as to whether the Canteen Stores Department (India) was an independent organisation or whether it formed part of the Government service. The matter was decided on 25.7.1972 and a copy of that judgment is produced before us for reference. The following observations in the judgment are relevant:

"It is important to remember in connection with all the arguments that can be advanced on behalf of the respondents that none other than the Union of India can be described as the owner

...7

of the undertaking, being the Canteen Services Department (India).....

The question is what is the meaning of that name and/or which is the legal entity who is the owner of that name.

The case of the petitioner that the legal entity that is the owner of the undertaking must be the Union of India appears to be correct. ...

Apparently, the ultimate owner of all the assets and the debtor in respect of all the liabilities must be the Union of India, though the properties may stand in the name of the Canteen Services (India) and the transactions may be effected in that name."

It was then found that Canteen Services (General Order) No.33 governed the service conditions and not Article 459 of the Civil Services Regulations. However, this finding was ultimately found to be of no avail to that applicant as it was held that the applicant had been properly retired.

7. A similar question also arose in Special Application Nos 1187/68; 2011/70 and 2012/70 of the file of the High Court of Bombay. These three matters were decided by a common judgment on 25 June, 1973. The Payment of Wages Act, 1965 has made a provision under which the employees were entitled to Bonus. The applicants in all these Writ Petitions were the employees of the Canteen Stores Department (India) and they had claimed Bonus under the Act. Section 32(iv) of the Act exempted the Government from the liability of payment of Bonus to their employees. The relevant part of that section reads as follows:

"32. Nothing in this Act shall apply to :-

(iv) employees employed by an establishment

engaged in any industry carried on by or under the authority of any department of the Central Government or a local Authority".

The claim of the employees was opposed on behalf of the Canteen Stores Department on the ground that the employees were engaged in an industry carried on by the Central Government and that, therefore, they were not entitled to any bonus. This contention was accepted and the claim of the employees for bonus was rejected. The matter went to the Supreme Court in Civil Appeal No.484/75. The Supreme Court confirmed that decision after holding that the employees of the Canteen Stores Department (India) were engaged in an industry carried on by a Central Government Department. The Supreme Court had discussed the history of the entire organisation before 1942 and then held that the Canteen Stores Department (India) was an establishment carried on by and by authority of the Central Government.

8. In view of these decisions it would be very difficult for the respondents to contend that before 1977 the Canteen Stores Department (India) was an independent autonomous organisation and that it has formed part of a Government Department only from 1.4.1977. It is also material to note that to constitute an independent autonomous organisation, the said institution must be a separate juridic person. For example a Company, a Society, or a Cooperative Society would have such separate existence as a juridic person on account of the incorporation of that organisation under the respective enactments. However, we are not shown that Canteen Stores Department (India) was incorporated as a separate entity under any such enactment which makes that entity a separate juridic person.

9. Our attention was also drawn to certain corres-
...9

pondence in 1971 from the Chief Controller of Imports and Exports. That correspondence shows that certain exemptions from import licences have been given ~~to~~ on the hypothesis that the Canteen Stores Department (India) was ~~a~~ under the Ministry of Defence. Certain exemptions under the Sales Tax Act were granted on that basis.

10. Mr.Sethna contended that the law laid down by the above mentioned decisions should be restricted only with respect to the question as to whether the employees were entitled to bonus or whether their services were governed by Canteen Stores (General Order) No.33. He also urged that the exemptions under the Sales Tax Act and under the Import and Export provisions should not be construed to mean that the employees of the Canteen Stores Department (India) were the employees of a Government Department from the beginning.

11. In our opinion this submission of Mr.Sethna is not well founded. The basis of the above mentioned judgments and the exemption from the Sales Tax Act established that the Canteen Stores Department (India) was a part and parcel of the Government Department. It would not be open for the respondents to contend that though Canteen Stores Department (INDIA) was treated as a Government organisation right from the beginning for the above mentioned purpose of Bonus, exemption of Sales Tax Act, we should record a different finding that before 1977 the Canteen Stores Department (India) was an autonomous body not owned by the Government.

12. The result, therefore, is that since before 1977 the applicant was an employee of the Central Government, in fact he was a confirmed employee as Manager Grade I. As laid down by the Supreme Court, mere merger

of funds, would not permit the Government to say that prior to merger there was a separate service and that a new service was constituted from 1.4.1977. Thus in the peculiar facts of the case and in the back ground of the Supreme Court decision mentioned above the provisions in rules of 1979 permitting the Government to reconsider the question of confirmed employees to be taken on regular basis afresh is not permissible and that provision is liable to be struck down. Consequently, the applicant will have to be treated as a confirmed employee with effect from 8.5.1974 i.e. the date on which he was confirmed and his old seniority at serial No.10 is not liable to be disturbed as a result of the fresh assessment and confirmation, in terms of the above mentioned Rule 3(1)(i) or 3(1)(ii) of the Recruitment Rules.

13. Hence we pass the following order.

ORDER

- 1) Rule 3(1)(i) and 3(1)(ii) which enable the Government to treat the employees confirmed prior to 1.4.1977 as being employed on ad-hoc basis and to put them through a fresh Selection for regular appointment is struck down.
- 2) The applicant would be entitled to carry his seniority as was existing on 31.3.1977 even after the merger of funds of the Canteen Stores Department (India) with the Consolidated Fund of India.
- 3) The respondents are directed to maintain that seniority. It is needless to say that on the basis of that seniority the

....11

applicant is entitled to be considered for further promotions and if found fit would be entitled to have such promotions on the basis of that seniority. Of course, the question as to whether he is entitled to such promotion will be considered by the competent authority according to rules. It is needless to say that the applicant would be entitled to all the consequential financial benefits in case he is so found suitable for promotion.

- 4) The respondents are further directed to take appropriate action in this respect within a period of four months from to-day.
- 5) Parties to bear their own costs.


(J.G. RAJADHYAKSHA)
MEMBER(A)


(B.C. GADGIL)
VICE-CHAIRMAN