

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

287/01

Dated this Wednesday the 10th day of October, 2001.

Vittahal Pandit Khandale Applicant.

Shri Uday Warunjikar

Advocate for the
Applicant.

VERSUS

Union of India & anr.

Respondents.

Shri R.R. Shetty

Advocate for the
Respondents.

CORAM :

- (i) To be referred to the Reporter or not ? **Yes**
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? **No**
- (iii) Library. **Yes**

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman.

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

O.A.287 of 2001

Dated this the 10th day of October, 2001

Hon'ble Smt.Lakshmi Swaminathan - Vice Chairman
Hon'ble Shri B.N.Bahadur - Member (A)

Vitthal Pandit Khandale,
Supervisor,
Armament Officers' Mess and Institute,
Pashan, Pune 411 021.
R/o Armament Officers' Mess Staff Quarter,
Pashan, Pune 411 021.

... Applicant

(By Advocate Shri Uday Warunjikar)

Versus

1. Union of India
through the Defence Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi.

2. President,
Mess Committee Armament,
Officers' Mess and Institute,
Pashan, Pune 411 021.

... Respondents

(By Advocate Shri R.R.Shetty)

ORAL ORDER

Hon'ble Mrs.Lakshmi Swaminathan, Vice Chairman (J) :

We have heard Shri Uday Warunjikar learned counsel for the applicant at great length on the preliminary question whether this Tribunal has jurisdiction in the matter relating to this Original Application. We have also heard Shri R.R.Shetty, learned counsel for the respondents and perused the documents on record.

2. The learned counsel for the applicant has taken us through in detail the constitution of the Armament Research Officers' Mess and Institute (AROMI) where he states that the applicant was working, before they passed the impugned order terminating his services dated 15.2.2001.

3. The learned counsel for applicant has very vehemently submitted that the provisions of the constitution of the AROMI show that the applicant is holding a civil post and, therefore, his case falls within the provisions of the Administrative Tribunals Act, 1985. He has contended that this Tribunal has jurisdiction in the matter. This has been opposed by the learned counsel for the respondents who has submitted, on the other hand, that AROMI is an Officers' Mess and Institute which is run by a Management Committee as constituted under the Draft Constitution of that organisation and is not part of the Defence Ministry. The learned counsel for the applicant has contended that as some of the officers who are guiding, advising, helping and controlling the affairs of AROMI are officers from the Armament Research and Development Establishment (ARDE) and Explosives Research & Development Laboratory (ERDL) which are constituent parts of the Defence Research & Development Organisation (DRDO), the applicant became a government servant. His contention is that by a process of connection through several layers of offices, some of whom might also be holding posts in the Defence Ministry/DRDO and other defence Departments who happen to be members of the Management Committee of the AROMI, the applicant will be a civil servant. He has emphasized, for example, that persons working in Defence establishments and so on or are in active participation in the Defence Ministry are government servants and so why not the applicant. In other words what he

submits is that the applicant becomes a government servant by virtue of the fact that some members of AROMI are Defence officers and, therefore, he is amenable to the jurisdiction of this Tribunal under the provisions of the Administrative Tribunals Act, 1985. As mentioned above, Shri R.R.Shetty, learned counsel, has submitted that the Tribunal does not have jurisdiction in the matter as AROMI is not a government Department or Organisation.

4. We have carefully considered the elaborate submissions made by the learned counsel for the applicant read with the provisions of the constitution of AROMI, which has been annexed to the reply filed by the respondents. We are unable to agree with the contentions of the learned counsel for the applicant that any of these provisions assist the applicant to show that he is a government servant within the provisions of Section 3 (q) read with Sections 14 and 19 of the Administrative Tribunals Act. We are also unable to agree with the contentions of Shri Warunjikar, learned counsel, that the issue raised by the applicant in the present OA is a "service matter" within the provisions of Section 3(q) which reads as follows :

"service matters", in relation to a person, means all matters relating to the conditions of his service 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 as the case may be, of any corporation owned or controlled by the Government."

The learned counsel has relied on the observations and judgment of the Bombay High Court in Bharatiya Pratiraksha, Mazdoor Sangh,

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Pune & others Vs. Union of India & others, (Writ Petition No.3248 of 2000) decided on 15.9.2000, copy placed at pages 110 to 119 of the Paper Book). His contention is that if the petitioners in that case who were admittedly working as casual boys in the Wet Canteens of the High Energy Materials Research Laboratory (EMRL) got reliefs, the applicant in the present case who is similarly situated should be similarly treated. He has, however, submitted that the petitioners in that case had filed the Writ Petition in the High Court and had not approached this Tribunal as a Court of first instance following the judgment of the Hon'ble Supreme in the case of L.Chandra Kumar Vs. Union of India & others, (1997 SCC (L&S) 577). This would lead to the conclusion that the case of the petitioners before the Bombay High Court and the applicant in the present case do not come within the jurisdiction of the Tribunal. The learned counsel for the respondents has submitted that the applicant in the present case is not on par with the petitioners who were employed in the Wet Canteens of EMRL, who were petitioners before the High Court. The judgment of the Bombay High Court in Bharatiya Pratiraksha Mazdoor Sangh (supra) will not assist the applicant to show that this Tribunal has jurisdiction in the matter.

5. It is relevant to note that what the applicant contends is that this Tribunal has jurisdiction in the matter, based on the provisions of the constitution of AROMI. We are unable to agree with this contention as the relationship of employer and employee

or master and servant has not been created between respondent No.1/Ministry of Defence and the applicant.

6. Another argument advanced by the learned counsel for applicant is based on the Army Instructions No.265 to 270 dated 26.10.1963. He has referred to paragraph 3 of these Instructions which stipulates the monthly rates of Mess Maintenance Allowance admissible to each officer on the authorised Peace, War or Special establishments at which a Unit, Formation Headquarters and Military establishment is maintained. His contention is that as an Army officer who receives such allowance from the Government of India/Consolidated Fund of India spends his Mess Allowance in AROMI Mess, therefore, the applicant is a civil servant and comes within the provisions of this Tribunal. We are unable to agree with this contention because it could lead to an absurd situation where any government servant who spends his salary received from the Reserve Bank of India/Consolidated Fund of India to buy any simple item like a soft drink or other consumable items, will lead ^{to} the manufacturer/seller of that item ^{to} claim that he is a Government servant. Such a proposition is not at all tenable. The claim of the applicant that the issues raised in this OA come within the provisions of the Administrative Tribunals Act, 1985, is not tenable.

7. After careful consideration of the other submissions made by the learned counsel of the applicant and the documents on

record, we have no hesitation to hold that this Tribunal does not have jurisdiction in the matter. The applicant has not raised an issue of a "service matter" with regard to the matters relating to the conditions of service in connection with the affairs of the Union as provided in Section 3 (q) of the Administrative Tribunals Act, 1985. Therefore, taking into consideration the provisions of Section 3 (q) read with Sections 14 and 19 of the Administrative Tribunals Act, 1985, this OA is liable to be dismissed on the ground of lack of jurisdiction.

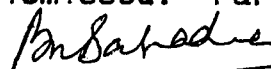
8. The learned counsel for the applicant had made another vehement submission that even if this Tribunal does not have jurisdiction in the matter but on sympathetic grounds, it should extend the ad-interim order dated 20.4.2001. He has vehemently submitted that in the circumstances of the case, even if the applicant had approached the wrong forum, there is no bar for the Tribunal continuing the interim relief by way of barring the respondents from evicting him from the Government quarter earlier allotted to him. This prayer has also been opposed by Shri R.Shetty, learned counsel for respondents who has submitted that the Tribunal cannot pass such an order once the ground of jurisdiction has been rejected. We see force in the submissions made by the learned counsel for the respondents in this regard. It is settled law that the plea of jurisdiction can be raised at any stage and it has also been held by the Hon'ble Supreme Court in *Moses Rev.P.M.A.Metropolitan & ors. Vs. Moran Mar Marthoma*, (JT 1995 (5) SC 1) that an order or decree without

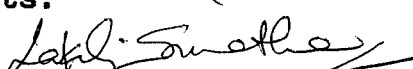
jurisdiction is non est in law. Therefore, once having come to the conclusion that the Tribunal lacks jurisdiction to adjudicate the issues raised in the OA, we do not consider it appropriate to pass any further orders in the matter, including on the interim relief as it would be non est in law. We are also fortified in our view by the observations of another decision of the Hon'ble Supreme Court in the case of LIC of India Vs. Mrs. Asha Ramachandra Ambedkar & another, (JT 1994 (2) 183) that law and not sympathy alone should apply. Accordingly, the plea of the learned counsel for the applicant to pass an interim order at this stage or to continue the ad-interim order is neither legal nor tenable and the interim order stands vacated.

9. In view of what has been stated above, OA is dismissed. In the circumstances, Registry is directed to retain one copy of the application for record purposes and return the other papers to the learned counsel for the applicant to enable him to approach the appropriate forum, if so advised.

10. After completion of the above order, the learned counsel for the applicant makes another submission that we should stay the order requiring the applicant to vacate the government quarter for some time/weeks. In view of what has been stated above in our order dictated in open court this prayer is also rejected.

11. In the result, for reasons given above, the OA is dismissed. Parties shall bear their own costs.


(B.N. Bahadur)
Member (A),


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)