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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 454/92

XXXXXXXXXXXXXX

DATE OF DECISION 9/2/94

Shri C.B.Kanojia & Ors. Petitioner

Mrs.Kiran Bhagalia Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

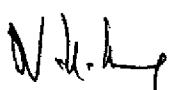
Shri R.K.Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri N.K.Verma, Member (A)

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


(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 454/92

Shri Chotelal Babulal Kanojia & Ors. ... Applicants
V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri N.K.Verma

Appearance

Mrs.Kiran Bhagalia
Advocate
for the Applicants

Shri R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

(PER: N.K.Verma, Member (A))

Dated: 9/2/94

In this application the applicants Chotelal Babulal Kanojia and 44 others have prayed for restraining the respondents by permanent injunction from terminating the services of the applicants except by way of superannuation or under disciplinary proceedings, (b) that it be declared that the applicants are in regular permanent service of the respondents w.e.f. 240 days of the continuous service from the date of initial appointment and the respondents be directed to give all the benefits of regular and permanent services of the applicants, (c) Guide lines be framed for appointment of Dhobies in the N.D.A., (d) during the pendency of the application the respondents be restrained from terminating the services. They have also prayed for interim relief in terms of prayer (d). Subsequently, they had an amendment to the prayers by inserting further prayers that it be declared that the petitioners are not bound by the agreement executed between the Respondents No. 2 & 3 and that such an agreement

is illegal and inoperative. The OA. was filed on 16.4.1992 and interim order was passed restraining the respondents from evicting the applicants from the premises of the NDA which they were occupying. Subsequently, on 30.4.1992 the stay order for eviction was vacated with the direction that the applicants will resume work without any pre-conditions. Further direction was given that respondents will not evict the applicants from their residential quarters so long as they continue working until this application is disposed of.

After completion of pleadings etc., the case was finally heard ^{18.1.1994} ~~today~~ // The facts of the case are that the applicants were appointed as Dhobies in December, 1965 on purely private basis payable from Regimental funds as per appointment order issued to Shri Chotelal and others. The terms of appointment included one month's notice or pay in lieu thereof by either side. No notice ^{was} ~~will~~ be necessary for removal from service for inefficiency or on disciplinary grounds. Each Dhobi was entitled to receive Rs.8/- per Cadet per month based on actual number of Cadets served. During the authorised vacation their pay was fixed at Rs.5/- per Cadet based on the passing out of parade. The pay was subject to review from time to time. They were to be under control of Colonel Incharge Administration who could warn ~~them~~, impose ~~punishment~~ punishment with a maximum of Rs.25/- at a time and also remove from service. It was also said that excepting warning ~~the~~ the other two ^{Punishment} ~~warning~~ will be awarded after a show cause notice. They were entitled to 12 days leave in a calendar year. However, leave exceeding 8 days at a time ^{was to} ~~will~~ be granted as a special case with the sanction of Colonel Incharge Administration. C.L. was not to be combined with any other type of leave. They were also entitled to 30 days earned leave during a year and one weekly off. However, they were not allowed any service benefits or

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terminal gratuity. An assurance was given that ~~in this~~ this position will be reviewed after satisfactory completion of one year. Free Regimental or Government accommodation if available ~~will~~ ^{was} be provided on payment of rent. Electricity charges etc. had to be borne by the Dhobi. The appointment letter also provided for free medical treatment and bonus. The appointment letter also contained a list of other duties and obligations. In March, 1970 one of the Dhobies was also appointed as Head Dhobi having all the terms of appointment in terms of letter dated 23.12.1965. This Dhobi was allowed an additional allowance of Rs.20/- w.e.f. 1.3.1970 for the additional responsibilities entrusted to him. The appointment made in 1965 was, however, terminated ^{without Show Cause Notice} in case of Chatelal w.e.f. 25.9.1971 and he was given a fresh appointment in the same service w.e.f. 6.9.1971. ^{Some} ~~However~~, ^{appointment} Other Dhobies were similarly terminated during that month of 1971 ^{as they were reappointed on} Conditions similar to what was initially enumerated.

However, the scale of pay was ~~increased~~ ^{indicated} as Rs.175-2-195-E8-3-225. Moreover, they were made eligible to more than one increment depending on the efficiency on the machine and their general standard of discipline and maintenance. During the Term Breaks the pay was restricted to Rs.150 p.m. The rate of pay underwent several changes and last enhancement was in 1990 when the pay was ~~again~~ revised to Rs.2475 per cadet per month based on the actual number of cadets they served and once in a year bonus worth 15 days of their pay or Rs.1000/- p.m. The applicants were approximately washing clothes for 50 cadets per month. They were given monthly salary of Rs.1250/-. They were also given free Government accommodation. A bonus of Rs.400/- per year was also paid for the last 4 years to each of the applicant. The applicants contend that their pay was paid from the fund of Govt. of India and they were being made to work round the clock without any other facility. They were being denied the

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benefit of regular permanent jobs, although the work is of permanent and continuous nature, ~~like those of~~ ^{like those of} while all other employees like scavengers, cycle-repairers, cobblers, cook, sweepers, waiters, etc. In all there are about 6 categories of such menial workers. Except the category of Dhobis all other employees are treated as regular employees and derive benefits of permanency. During the pendency of the application some of the Dhobis were retired with immediate effect without complying with the requirement of notice in the letter of appointment, ~~terminated~~ ^{was offered} from the services on the ground that they were physically unfit to discharge the duties. The applicants tried to bring these difficulties to NDA authorities and finally they made a written complaint to the Commandant, NDA on 8.4.1992. Instead of giving them a reply to their representation, a 3rd party was brought in the campus for washing the clothes. This 3rd party was private contractor and the applicants ~~had~~ apprehended that their services ^{would be} ~~being~~ terminated in the event of the 3rd party contract. Hence the OA. During the pendency of this application the respondents appointed a contractor for washing clothes in the NDA. The petitioners have also not been paid the salaries for the month of April and May, 1992 and afterwards their pay was reduced to the level of Rs.29/- per cadet p.m. The contractor is pocketing the balance of Rs.11/- per cadet per month which were earlier paid to the Dhobis directly.

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3. Mrs. Kiran Bhagaliya, learned counsel for the applicants took us over the various factual details of the case already contained in the OA. However, the main brunt of her argument was whether the Dhobis working in the NDA and paid by the regimental fund could claim to be employees of the Government. It is undeniable fact that the Dhobis were paid out of the regimental fund granted to the NDA. According to the definition

of Regimental Funds as given in Chapter XVIII of the Defence Services Regulations. Para 801 (b) Regimental Funds comprise of all funds other than public funds as defined above, maintained by a unit. Para 801 (a) defines Public Funds as "Include all funds which are financed entirely from public money, the unexpended balances of which are refundable to Government in the event of not being devoted to the objects for which granted, and also (i) unissued pay and allowances; (ii) office allowance fund; and (iii) the estates of deceased men and deserters. The Regimental funds are further clarified under Para 820. Regimental funds comprise (a) all funds, other than public funds as defined in para 801 above, maintained by a unit, which are financed either wholly or partly from public money and (b) private funds which include all funds not financed in any way from public money.

"The OC whose position in relation to regimental funds is that of trustee for the personnel of his unit, is responsible that these funds are properly applied, with special reference to the object of each, for the benefit of the personnel or unit as a whole, or in certain cases, for the benefit of subscribers to the funds, when he will be personally responsible for any portion of the funds which may be misapplied or lost owing to neglect on his part.

The OC may delegate details of his administration to officers, JCOs, WOs or selected other ranks serving under his command, but this delegation does not relieve him of his responsibility that the money entrusted to them is properly administered and used. If a loss occurs, all ranks concerned will be called upon to show that it was not due to any failure on their part."

3. The learned counsel for the applicant pressed the point that regimental funds as per this definition comprise of funds maintained by a unit which are financed either wholly or partly by the public money. Admittedly, the money allotted for the cadets is a public money coming from the defence ^{estimates} account.

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The salaries of the applicants are therefore paid from the public money routed through the regimental funds.

It is nobody's case that the cadets or anybody else make contributions to ^{any} Regimental funds for payment of the Dhobis' pay or allowances. The learned counsel states that there could be regimental fund which are not financed from public money. But so far as the applicants are concerned, their salaries are paid out of public money forming part ~~of~~ of the general money of the Central Government. The respondents have themselves admitted that the salaries of the applicants are being paid out of the regimental fund which are public money on account of washing allowances payable to the cadet. She challenged the definition of public fund in the Defence Services Regulations as that will not change the character of public money from which the applicants' salaries were drawn. If the nature of the service provided by the applicants was of a permanent nature and for cadets who were paid out of the public funds, can they ^{be} said to be employees of Central Government or not?

4. The learned counsel for the respondents in his written reply had produced a number of judgements given by several Benches of this Tribunal that the regimental funds are not public fund and any one paid from the regimental fund could not have a status of a Government servant and therefore he could not get any relief from this Tribunal. However, Mrs. Bhagalia submitted that these judgements are distinguishable from the applicants' case. The running of a regimental canteen is altogether a different matter than the work of a washerman ~~who are governed by the NDA authorities, by~~ ^{hired & regulated} direct Supervisor of an office 1/2 of Washing Service

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5. In her rejoinder the learned counsel for the applicant had said that the phrase 'public funds' used by the respondents in the application connotes public money and not 'public funds' as per the definition in Army Regulations. The applicants are only washermen. They are illiterate and uneducated. They could not get hold of the Army Regulations before filing the original application. The word 'Public fund' is loosely used in the application to indicate money belonging to the public and not from the public revenue. She emphasised that as per the conditions in the appointment letter imposed, the work of the Dhobis was taken by the Officer-in-charge directly without the intervention of any contractor ever since 1965 and the terms and conditions under which they were working were sufficient to establish a master and servant relationship as decided by the Hon'ble Supreme Court in the case of Bharangadhra Chemical Works. By their own admission, the respondents have shown that washing allowance is paid to the cadets on monthly basis under the Govt. of India orders with the concurrence of the Ministry of Finance at all the academies run by the Govt. of India under the Ministry of Defence and is from the proper budget-Head. This washing allowance is ^{paid} according to the respondents for the sake of convenience and for washing the clothes of the cadets so that equity is maintained in society. This amount is paid to the Contractor or to the Dhabi either in their individual capacity or through the contractor. The whole question therefore devolves on the true interpretation and application of the regimental fund. Smt. Bhagalia emphasised that regimental fund in the present case was a public fund purely financed from the public money as washing allowance is granted by the Govt. of India. It was being paid directly to the Dhobies in their capacity as servant of the washing services of the NDA Khadakwasala and therefore the applicants were entitled to regularisation of their services on permanent basis and other benefits of a permanent service.

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6. Shri Shetty on the other hand very assiduously and vehemently denied the maintainability of the application. He said that the Dhobis were not regular civil servant with a scale of pay. The Dhobis were being paid from the regimental funds which was a pooled money of the washing allowance already paid to the cadets and therefore this Tribunal has no jurisdiction to entertain this application. He cited the latest Supreme Court judgement produced in the AISLJ at page 207 of 1992 in the case of Union of India & Ors. vs. Tejram Parashramji Bombhate & Ors. wherein the Hon'ble Supreme Court has decided that the Secondary School run by the local arrangement made by the officers of the ordnance factory cannot be said to have do with Central Government. The respondents in that school were not paid by the Central Government. They were not holding any appointment under the Central Government. There is no relationship of master and servant. The respondents were employed in the central school by local arrangement made by ordnance factory. It is not proved that how the Central Government is accountable to such arrangement made by the local officers. The Hon'ble apex court, however, held that Section 14 of the Administrative Tribunals Act, 1985 confers no jurisdiction, power and authority on the Tribunal to deal with the service matters of the employees like the respondents. Hon'ble Supreme Court also said in that judgement that "The Central Government has taken a decision that it will not involve itself in sanctioning or running classes beyond the Primary School level. It is a policy matter involving financial burden. No Court or the Tribunal could compel the Government to change its policy involving expenditure." Besides, the respondents have quoted a number of judgements given by several Benches of the Tribunal including this very Tribunal wherein it was held that a regimental fund based employment could not be a matter of

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judicial view by the C.A.T. Shri Shetty therefore took a preliminary objection of lack of jurisdiction in this matter as this is a non-Government run institution.

7. We have given a very careful and anxious consideration to the pleadings of both the parties. On the very face of it and in view of the Hon'ble Supreme Court's judgement, the submissions made by the learned counsel for the respondents may appear ~~persuasive~~ and acceptable. but if one goes deep into the matter, one cannot ~~brush~~ ^{Shut} ~~its~~ eyes to the true nature and character of regimental fund. A regimental fund has not been considered a part of the public fund. The public fund as defined in the Defence Services Regulations seems to be quite a ~~nebulous~~ one. Perhaps the intention of the rule maker of the Defence Services Regulations ^{has} to include ~~the~~ nomenclature ~~of~~ the consolidated fund, the contingency fund and the public account of Govt. of India as ~~given in the articles to encompass the consolidated fund of India and the public account as defined in Article 266 (1) and (2) of the Constitution of India.~~ ^{the}

Article 266 (1) and (2) reads as follows :

"(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be."

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Number (3) of the same Article contains that "No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution." The Defence Services Regulations does not make any distinction between the Consolidated fund of India and all other public money which come under the public accounts of India. While the Consolidated fund of India is governed by the Constitution, there is not such restriction on the public account fund which is a public money ~~released~~ ^{Collected} by the Government by way of deposit by the Saving Bank, Postal Life Insurance held by the Government not as a measure of revenue but as a trustee on behalf of the subscriber or depositer. This public money ~~is~~ ^{is} not to be used by the Government without specific permission of the trustee. The General Financial Rules had already defined the Consolidated Fund, Public Account Fund and also the Contingency Fund of India.

In Rule 3, it says that :

"All moneys received by or on behalf of Government either as dues of Government or for deposit, remittance or otherwise shall be brought into Government Account without delay, in accordance with such general or special rules as may be issued under Articles 150 and 283 (1) of the Constitution."

Rule 4 (1) (a) says that :

"Under Article 284 of the Constitution all moneys received by or deposited with any officer, employed in connection with the affairs of the Union in his capacity as such, other than Revenues or public money raised or received by Government, shall be paid into the public Account."

N.H.W. Taking a clue from this definition, ~~and~~ ^{of} Consolidated fund of India and the Public accounts, there is a irresistible conclusion that regimental fund is having two types of characters and nature. The Government on the civil side is keeping three types of accounts through Controller and Auditor General of India. One is Consolidated fund of India having the revenue

Capital fund, the other is contingency fund set up under Article 211 and the 3rd is the Public Account which relates to debt, deposits, advances and remittances etc. Then the Government also gives grant-in-aid to both Government and non-Government bodies in respect of payment of services rendered or supplies made. The regimental Fund therefore gets covered by both the Consolidated fund of India through the grants-in-aid as it is paid to the institutions under the military which have to be funded and set up to ensure the various activities including social and welfare activities. There are certain types of activities which are wholly funded by the grants-in-aid credited to the regimental fund for which no subscriptions are payable by the Members of the Armed Forces. There are also certain types of other institutions which have the benefit of grants of Fund from the Government as also subscriptions from the Members of the Armed Forces contributing to the same. Regimental funds are controlled and audited by the CGDA through Controller of Defence Accounts along with other Public Accounts of the Govt. While the OC of the Unit is the trustee of the Regimental Fund, he is fully responsible and accountable for these funds. His position as Trustee is not governed by the Indian Trusts Act, but by the Army Act and the Defence Service Regulations. Investments in recognised securities or deposits in State Bank or any nationalised Bank has to be made at the discretion of the Brigade Commander/Sub Area Commander or Head of a Branch in the case of funds held at Army Headquarters. These officers exercise this discretion by utilising their position in the Army hierarchy and not as Trustees. Besides, before making any first deposit as an investment, sanction of the CDA is to be obtained. But the safety and accountability of the Regimental Fund squarely rests upon the O.C. as stated in Section 825 of the D.S.R. Section 833 provides monthly examination of the

fund by the O.C. Quarterly audit is to be carried out by Station Audit Board composed of ~~three~~ senior officers.

Copies of these reports will be sent to Brigade Commander/ Sub Area Commands etc. Hence a reading of these rules gives a clear picture that though the Regimental Funds could also be composed of private funds, once the money is with Regimental Funds it comes under total control of the Government and its utilization of accounts is decided by Govt. functionaries. Thus it can't be said that the Regimental Fund is a private fund which is outside the net of judicial scrutiny or review before the Central Administrative Tribunal. The applicants are Civilians appointed to a post connected with defence and hence are fully justified in coming for redressal of their grievance here.

8. In the instant case, the respondents by their own admission said ~~so~~ that the NDA is a Government run institution to train the cadets who are paid allowances and stipend during their training period. After having completed their training successfully, unlike other institutions and training institutions, these cadets are given commissions in the Armed Forces ensuring them a career and Government job. While undergoing training, admittedly they do not have the locus standi of Government servant. But all the same they are regulated by rules and regulations of the Government and have to be under proper disciplinary control of the Armed Forces. It is only for the reasons of unsatisfactory completion of training or his health ground that ~~the~~ cadet is ~~discharged~~ before granting him a commission. Therefore we can safely presume that the NDA is ^{an} active duty of training Govt. paid and responsible cadets for whom Dhobis are required to wash their clothes. The washing allowances is paid from the Consolidated Fund and is funded in the regimental fund in the name of the cadets when the cadets are not in the position of handling washing allowance themselves.

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The Establishment table of the NDA prove that the washing service is an undertaking by the NDA by employing the Dhobi on a regular basis for which earlier they had prescribed rate per cadet per month which was, subsequently in 1971, converted into a monthly pay with a scale of pay including an increment. Later on in the course of time, payment was again reverted to per cadet basis at the rate of Rs.40/- p.m. per cadet. Whatever has been the mode of salary to the Dhobi, it is an incontestable fact that they were being paid a pay at an approved scale of pay from the regimental fund which was wholly funded by the Government of India (Consolidated Fund of India). Requirement of Dhobies is not a casual requirement which can be dispensed with from day to day or month to month. That was the one reason even when there is a vacation in the NDA the Dhobies were paid at the reduced rate. When the Dhobies were paid during a vacation in the absence of cadets, there is no question of washing allowance being paid as a private subscription to the Dhobi. Therefore, we have to distinguish the position in this particular case from the other applications adjudicated by the other Benches of the Tribunal including this Bench. In other cases like the Canteen and others the activities were entirely social or welfare funded by the regimental fund on the basis of subscription collected from the Members of Armed Forces Stationed in Cantt. It cannot be said that washing of clothes of the cadets or mess linen is a social or welfare unit. It is a bonafide duty ~~arising~~ ^{for} a set of cadets so that their training should go unhindered and without obstacles. It is just like a messing service provided by the NDA. If there are no washed/pressed uniforms, there cannot be any parade or drill. Thus in our view the activities of the Dhobies funded by regimental fund cannot be equated with that of regimental canteen providing refreshments outside the mess or for providing grocery item for sale. We have therefore no hesitation in stating that the payment out of

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regimental fund does not disqualify the applicants from getting the protection of Section 14 of the Administrative Tribunals Act, 1985. We think that the Dhobis' application is maintainable or sustainable.

9. Having established this nexus of Dhobies having a civil service under the Govt. of India, we come to the second point whether their services could have been terminated without giving them proper notice. It was mentioned in the appointment letter that apart from punishment of warning, other two ~~punishments~~ ^{awarded after} will be a proper show cause notice. Applicants' services have now been terminated without any issue of show cause notice ^{in the place} ~~except~~ that since their services are not governed by any departmental rules of the Government, their services could be dispensed with. We do not think that we can allow such an arbitrary action on the part of the authorities of NDA when employment of these applicants have been possible because of the Government funds involved and when they were being afforded all the facilities, normally available to a Government servant. In all fitness of things, the NDA authority should have prepared a scheme of employment of these Dhobies with their terms and conditions properly defined. There are number of other employees like the Extra-Departmental Agent in the Department of Posts/Canteen Boys in Non-Industrial Canteens under the Ministry of Defence who were earlier not considered Government servant in the real terms but slowly they were able to obtain the Government order for treating them as holders of civil service and protection of law for enforcing their rights. In the course of arguments, it was submitted by the learned counsel for the applicant that there are nearly 4 lacs of applicants in the Defence establishment who are paid their salaries from the regimental fund. It is not possible for us to say that they are all holders of civil posts. Atleast those employees like the present applicants deserve to be covered under scheme which will ensure fair wages for their services and other benefits normally given to non-industrial workers. It seems that these

N.K. (Signature)

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Dhebies inspite of the fact that they are working nearly 30 years in the Defence establishments are neither covered by the Provident Fund Act or other Govt. of India scheme applicable to this kind of work force. It is high time that the authorities of the Defence establishments rise to this situation and give the below paid applicants to give their well deserved dues.

10. In view of the observations above, we allow the application partly. The respondents will be restrained permanently ~~by~~ terminating the services of the applicants except by way of superannuation or under disciplinary proceedings. The authorities of the NDA may prepare a scheme for appointment of the Dhebies on a permanent basis and put them on a regular footing as permanent Government employee although paid from the regimental fund.

N.K.Verma

(N.K.VERMA)
MEMBER (A)

Mr. S. Deshpande

(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.

This document is dated 10/10/95
in CP 92195
by order of the
Chairman