Ori. in OA 153/94

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 153/94, 154/94, 156/94, 157/94, 162/94, 163/94, 164/94, 166/94, 788/94 and 1181/96.

Dated this 9th, the Tuesday day of October, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Mrs. Subamma Venkat, Residing at - Room No. 4, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 153 of 1994.
Smt. Muktabai Ramchandra Khilare, Residing at - Room No. 15, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 154/94.
Mrs. Sushilabai Nagnath Jadhav, Residing at - Room No. 9, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 156 of 1994.
Mrs. Saraswati Chandrasekhar Pillai, Residing at - Room No. 16, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 157/94.
Mrs. Mangal Sonba Kamble, Residing at - Room No. 14, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 162/94.
Mrs. Kanta Babu Shaikh, Residing at - Room No. 18, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 163/94.
Shri Atmaram Sidu Adav, Residing at - Room No. 8, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant in O.A. No. 164/94.
Shri Venkat Subhaya, Residing at - Room No. 4, Nursing Cadet Mess, A.F.M.C., Pune.	Applicant No. O.A. No. 166/94.

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Shri Suresh L. Suryawanshi
Residing at -
C/o. D.N. Deshmane,
'Adarsh Colony,
Tingre Nagar, Pune.

Applicant in O.A. No. 788/94.

Shri Madhukar Kondiba Kamble,
Residing at -
'A' Mess, A.F.M.C., Pune.

Applicant in O.A. No. 1181/96.

(By Advocate Shri D.N. Deshmane).

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. General Officer Commanding,
I/C Southern Command,
Pune 411 001.

3. The Commandant,
Armed Forces Medical College,
Pune - 411 040.

4. The Principal,
Nursing Cadet Mess,
Armed Force Medical College,
Pune - 411 040.

5. The President,
Mess Committee,
Armed Forces Medical College,
Pune - 411 040.

Respondents in all the O.As.

(By Advocate Shri R. K. Shetty)

: ORDER :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

The issue involved in all these O.As. are one and the same i.e. seeking equal pay for equal work, regularisation of their service, to pay the difference of wages based on the principles of equal pay for equal work and not to terminate their services without due process of Law, etc.

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On the request of the Counsel, all these matters were referred to Division Bench. Since common facts and question of law are involved in these cases, we are obliged to hear all these O.As. jointly and are being disposed of by this common order.

2. In O.A. No. 1181/96, the applicant is working as 'Masaljee' w.e.f. 16.09.1992 with the President, Mess Committee, Armed Forces Medical College, Pune, and other applicants are working as Bearers, Cooks and Safaiwalas with the Principal, Nursing Cadet Mess. The prayer made in all these O.As. are similar, therefore, they have been combined together and disposed of with a common order.

3. None appeared on behalf of the applicants. Even on earlier two occasions, the Counsel for the applicants did not appear. Though the parties were informed that all the petitions will be heard simultaneously and notice was issued, none present. Except the filing of the O.As, the Counsel for the applicants did not appear thereafter. Since the pleadings are complete and the matter is listed for final hearing peremptorily, we are left with no other option but to take up the matter on the basis of the pleadings of the parties.

4. The Counsel for the respondents, Shri R.K. Shetty, vehemently urged that these O.As. are not

maintainable, as the prayers made by the applicants does not meet the requirements prescribed under Section 14 of the Administrative Tribunals Act, 1985, because the applicants are neither employees of the Union Of India, nor are they defence employees nor do they hold any civil post. They have not submitted any proof of their employment, such as appointment order, etc. Therefore, the applications are not maintainable and deserves to be dismissed inlimini. The applicants' name is neither seen in the list nor the College Authorities are aware of their particulars and therefore, they are not in the roll of this College.

5. The Counsel for the respondents further submits that the President, Mess Committee, is a non-official and ex-officio appointment held by a faculty member on a honorary basis, just to supervise the activities of the Graduate Mess and therefore, has no locus-standi. Further, it is submitted that the students of the A.F.M.C. are not employees of the Central Government and the applicants are supposed to render services to the students of A.F.M.C., who are not Central Government employees/Nursing Cadet Mess. The applicants are not engaged in the affairs of the Union Of India nor they hold any civil post. There is no contract of employment existing between the applicants and the Commandant, A.F.M.C. or the Principal, Nursing Cadet Mess, therefore, the C.C.S.(CCA) Rules are not applicable to the applicants. The Commandant, AFMC

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or the Principal, Nursing Cadet Mess, Pune, have no control whatsoever on the duct of work of the applicants. It is further submitted that though the term of Civil Post is not defined either in the CCS(CCA) Rules or the Act, 1965, the Principal Bench having analysed the issues concluded that to ascertain whether a post is a civil post under the Union or not, following guidelines are to be applied :-

i) Is the post created by the Government and may be abolished by the Government.

ii) Are conditions of service of such posts prescribed,regulated and controlled by the Government.

iii) Are the duties attached to the post connected with the affairs of the State.

iv) Are the salary and other emoluments attached to the posts paid out of the revenue of the State.

Since none of the above criterias have been fulfilled by the applicants, the question of treating them as Government Servants hardly arise.

6. The respondents further submit that, it is true that the function of the Mess and its casual workers are under the control of the College through the President Mess Committee appointed as Ex-Officio but this does not necessarily make it a Government Department nor a part of the Central Government.

7. In this O.A., the applicants are demanding pay revision on the ground of 'equal pay for equal work'

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The question of pay revision cannot be entertained by the Tribunal having regard to series of decisions rendered by the Supreme Court and other authorities in this behalf. The pay revision is the function of the Central Pay Commission and not the task of the Tribunal. The Tribunal cannot revise or prescribe any scale of pay. In support of their contention, various decisions of the Apex Court and other Courts have been cited by the respondents in their written statement. Therefore, the respondents submit that since that applicants do not come within the purview of the Administrative Tribunals Act nor they are governed by the C.C.S(C.C.A) Rules. Therefore, the petitions are required to be dismissed as they are not maintainable.

8. Admittedly, the applicants are not paid out of the consolidated funds of India but from the Mess Fund of the AFMC by the President Mess Committee/Principal, Nursing Cadet Mess, therefore, the applicants cannot demand the status of Government employee and also cannot demand for absorption as Permanent Government servant. Nothing is on record to show that the applicants have been appointed by the Government, hence the question of termination or absorption and payment of equal pay for equal work hardly arises. All these applicants have been given a job by the Mess Committee, which is an informal voluntary body under the Mess Committee just from the open market without following any formalities that are required to be carried out for Government

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appointment. The applicants are given free meals while on duty and accomodation by the Mess Committee, etc. Therefore, the Learned Counsel for the respondents submits, as the application itself is not maintainable, the question of considering their absorption and equal pay for equal work hardly arises. In support

9. In support of his contention, the Learned Counsel for the respondents relied upon three decisions of the Central Administrative Tribunal, Allahabad Bench, Madras Bench and Ernakulam Bench. In R. D. Shukla V/s. Union Of India & O.A. No. 213/88 decided on 04.05.1989 & similar issue arose for consideration before the Allahabad Bench. The applicants in this O.A. were working in Red Eagle Canteen, which is meant and constituted for canteen services to the troops of Headquarters 4 Mountain Division and is a sistern concern of the Canteen Stores Department. The Tribunal after considering the rival contentions of the parties, held that the applicants are the private employees of the REC and they are not civilian Government employees and are not governed by the CCS Rules. The Ministry of Defence is not concerned with the functioning of R.E.C. as it is a unit of private institution and the provisions of Act 311 of the Constitution are not attracted and the services of the applicants having been terminated in accordance with the terms and conditions of their service, they are not entitled to any relief. Therefore, the Tribunal held that the applicants have failed to establish that they are the

members of the Central Civil Services or hold the Civil Post under the Union of India. The Provisions of the Administrative Tribunals Act XIII of 1985, therefore, are not applicable to them and this Tribunal has no jurisdiction to entertain any dispute pertaining to their service matters and it is unnecessary to examine the order issues raised in these petitions. In O.A. No. 170/86 Shri K.A. Joseph V/s. Union Of India & Others before the Madras Bench of this Tribunal, decided on 16.06.1987, the applicants were appointed by the Respondent No. 3 i.e. The Commanding-in-Chief, INS Venduruthy, Cochin, as Sports Malis and were working in the sports ground attached to Venduruthy. In this case also, the department had taken a stand that the applicants have never been employed against any posts under the control of the respondents and that the applicants are not members of the civil service and as such, the application is not maintainable. Thirdly, in O.A. No. 308/90 decided by the Ernakulam Bench of the Tribunal (K.M. Xavier V/s. Union Of India & Others), the applicants were working as Bus Conductors in the Naval School Bus and they were being paid consolidated salary each month. The contentions raised in these cases were - all the applicants were appointed against regular vacancy and they are doing the work of the regular employees. The grievance of the applicants was that, though they were appointed towards regular vacancies, the third respondent treating them as casual workers denies them the benefit of equal wages with the regular employees. In that connection, the Tribunal had

observed that the foremost question to be determined is, whether the application is maintainable under Section 19 of the Administrative Tribunals Act, 1985. Keeping in view Section 14 of the Administrative Tribunals Act, the Tribunal observed that the Central Administrative Tribunal has jurisdiction, powers and authority to deal with matters enumerated under Section 14 and not anything else. In this connection, a decision of the Full Bench in Rehmat Ullah Khan V/s. Union Of India & Others was cited, wherein it was held that casual labourer/daily rated employees though not holding a civil post is doing civil service of the Union, and that any dispute relating to his service matter falls within the jurisdiction of the Central Administrative Tribunal. So if the applicants in these cases were casual employees under the Government, then the Tribunal has got jurisdiction to entertain the applications regarding their grievances but the Bus Conductors working in INS Venduruthy, Southern Naval Command, were engaged as Casual Labourers by the third respondent. As they were not working under the Government, considering the rival contentions of the parties, the Tribunal held that they do not have jurisdication to entertain the application, as it is not a subject matter coming within the purview of the Administrative Tribunals Act. It was further urged by the Counsel for the respondents that the applicants were being paid from the non-public fund and not from the fund belonging to the Government of India. Ultimately, the Tribunal held that they do not have jurisdiction to entertain the grievance of the applicants and the application was dismissed

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10. In the instant case, the applicants have neither made out any case for our interference nor have they shown any appointment letters that they were working under the Government which was funded by the Government of India. In the absence of any material facts, it is not possible for us to sustain the plea of the applicants that their services should be regularised or to direct the respondents to pay equal pay for equal work or to pay the difference in wages, etc.

11. In the result, we are of the opinion that the applicants cannot be treated as Government Servant nor holding any civil post under the Central/State Government, therefore, the question of applicability of provisions of the Constitution does not arise. At the most, the applicants may be governed by the particular appointment letter issued by the authorities, which is not under the Government. That by itself does not give them a right to claim for regularisation or equal pay for equal work.

12. In the facts and circumstances of the case, we are of the view that there is no merit in the O.As. and accordingly, the O.As. are dismissed as devoid of merits. No order as to costs.

MEMBER (A). MEMBER (J).

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