

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1465/95

TRIBUNAL'S ORDER

DATED: 4.7.2001

Shri D.V. Gangal counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

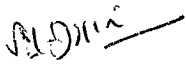
2. The argument in this case were resumed to this morning (case was listed as part heard). The learned counsel for the respondents sought to produce the record to substantiate his stand that the applicants are not been paid from the consolidated fund of India. At this stage the learned counsel for the applicant, Shri D.V.Gangal stated that he would also like to see/inspect the same. The issue whether this could be allowed or not was raised and both sides have been heard with reference to Rule 12 of the CAT (Procedure) Rules as also with reference to the judgement in the case of B.N. Rangwani V/s Union of India and others (page 116 VolI of Full Bench judgements)

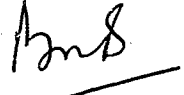
3. At the end of the arguments, Shri Masurkar states that if the Court orders then the relevant documents could be shown to the applicants / the learned counsel on record.

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4. It is hereby ordered that the relevant documents shall be shown to the applicant or the advocate on record who are allowed to do so by visiting the office of respondent at Pune on any working day upto 18.7.2001.

5. The case is thereafter posted for final hearing on 24.7.2001. Since the matter has been "part heard" for long period, no useful purpose will be served in keeping the same in part heard. Hence it is ordered that the matter is released from part heard.


(S.L. Jain)
Member(J)


(B.N. Bahadur)
Member(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH

MUMBAI

O.A.No.1465 of 1995.

Date of Order:18-9-2001.

Between:

1. Chandrakant Mariba Kamble.
2. Ravindra Sitaram Salunkhe.
3. Kishor Shamrao Khanjode.
4. Mathew Barana.

...Applicants

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1. Union of India, through the
Secretary, M/o Defence, Department
of Defence Production and Supply,
D.H.Q. P.O., New Delhi-110 011.
2. Director General, H.Q., D.G.Q.A.,
Department of Defence, Production
& R.M.D.E.P., South Block, D.H.Q.
P.O., New Delhi-110 011.
3. The Controller, C.Q.A.(EE),
Aundh Camp, Pune-411 027.

...Respondents

Counsel for the Applicants :: Mr.D.V.Gangal

Counsel for the Respondents :: Mr.V.S.Masurkar

CORAM:

THE HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN

THE HON'BLE SMT.SHANTA SHASTRY, MEMBER(ADMN.)

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: ORDER :

(Per Hon'ble Sri Justice V.Rajagopala Reddy, Vice Chairman)

The applicants have been working as casual labourers in the Wet Canteen of Controllerate of Quality Assurance (EE), Pune, (for short "C.Q.A.(EE)") from 1988. It is the case of the applicants that the Canteen was a statutory Canteen established under the provisions of the Factories Act, as they have been working for the last more than 7 years, they are entitled for conferment of temporary status and regularisation in accordance with the Scheme of regularisation dated 1-9-1993. As the respondents have initiated proposals to appoint regular employees afresh to be the staff of the Canteen displacing the applicants, the present OA is filed for the relief of conferment of temporary status and regularisation as the employees of the Canteen.

2. The applicants submit that in pursuance of letter issued in 1987 by the Director General of Inspection for opening a departmental Canteen in Defence Establishments, which has been approved by the Director of Production and Inspection, a Canteen has been set up and the applicants have been employed. They have been discharging their functions as employees of the Canteen continuously in one capacity or the other. In 1995, however, they are sought to be displaced to appoint fresh candidates in the Canteen on the ground that the sanction of the President has been given for setting up the statutory Canteen. It is stated that the applicants have been working in the Canteen, which has been controlled by the department and was

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set up from the funds of the department and hence they are entitled for being conferred with temporary status under the Scheme as they had completed more than 240 days in a year.

3. The learned Counsel for the Applicant submits that the Canteen being a statutory Canteen, the Canteen workers are Government servants and they are entitled to be regularised in the Canteen as per the terms of the Scheme dated 1-9-93.

4. Respondents, however, in their counter affidavit stated that the applicants having not been recruited through Employment Exchange are not entitled for regularisation under the scheme of regularisation dated 1-9-93. It is also averred in the reply that the applicants were working only on part-time basis and they have been engaged occasionally from August, 1989 to December, 1995 and hence they cannot claim the relief of regularisation. It is further stated that the Wet Canteen in which the applicants were working was not sanctioned by the Government and was being run as a welfare measure with existing resources by the Managing Committee consisting of a Board from all categories of employees. The funds were contributed from the Regimental Funds (non-Government Funds). It is also stated that the applicants were not working continuously. The learned Counsel for the Respondents therefore submits that as the applicants were not recruited through employment exchange though they have been working for over a long period, they were not entitled for regularisation under the Scheme.

5. Heard the Counsel for the Applicants and the Respondents.

6. Much time has been consumed by the arguments of the learned Counsel for the Applicants to show that the Canteen set up in 1988 was a statutory Canteen and hence the applicants are regular Govt. employees. As they have been working over a long time, they are entitled for regularisation under the Scheme dated 1-9-1993.

7. The learned Counsel for the Applicants places reliance upon Annexure A-I issued in February, 1987 by the Director General of Inspection in which the necessity for opening of a departmental wet canteen in the Controllorate of Inspection(Engg.Eqpt), Pune, has been approved. From this it is sought to be argued that the Canteen, which was set up in 1988 in pursuance of the above decision was a statutory Canteen set up under the provisions of the Factories Act, 1948. Having been appointed in such Canteen as casual labourers the applicants are entitled for regularisation on completion of 240 days in accordance with the Scheme dated 1-9-1993. The Director General of Quality Assurance was addressed by the Govt. of India dated 31-8-1995, where the sanction of the President for creation of statutory canteen in Controllorate of Quality Assurance(Engineering Equipment) at Pune, under Section 46 of the Factories Act, 1948, was conveyed. From a perusal of the above proceedings, the grants are provided for setting up the Canteen and the staff was also authorised to be filled up. Apprehending that the above proceedings would

result in the discharge of the applicants, the present OA is filed seeking for regularisation stating that they are infact the employees of the statutory canteen.

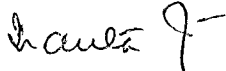
8. In our view, the letter dated 18-2-1987 only shows that the necessity for opening up the departmental Canteen had been approved by the Director of Production & Inspection. The actual sanction for setting up the statutory Canteen was, however, given only in 1995. Pending the setting up of the statutory Canteen, however, the applicants came to be appointed in a Canteen set up in the Controllorate and the applicants have been working since 1988.


9. It may be true that as the applicants having been working for quite a long time, they may aspire justifiably for conferment of temporary status and regularisation as per the above Scheme of 1993. But in the face of the stand taken by the respondents that they were not recruited through employment exchange and that fact having been admitted by the learned Counsel for the Applicants, it is not permissible for us to grant the relief of granting temporary status or for regularisation under the above Scheme. The above Scheme contemplates conferment of temporary status only in respect of casual labours, who have been recruited through Employment Exchange and not in case of persons who were appointed having been hand-picked by the authorities concerned or who entered service through back door.

This position was made clear by the Hon'ble Supreme Court in the case of THE EXCISE SUPERINTENDENT, MALKAPATNAM, KRISHNA DISTRICT Vs. K.B.N. VISHWESHWAR RAO & OTHERS (1996(6) SCALE 676). The question whether the applicants are the employees of the statutory Canteen or not may not be necessary to be gone into in this case. Even assuming that the applicants are working in the statutory Canteen, since they have not been recruited through Employment Exchange, they are not entitled for temporary status and regularisation under the Scheme.

10. However, it has to be said that the applicants are entitled to be continued until the regular employees are appointed through Employment Exchange in the Canteen.

11. Subject to the above observation, the OA stands dismissed. No costs.


(Smt. Shanta Shastri)
Member(A)


(V. Rajagopala Reddy)
Vice Chairman

Dated: this the 18th day of September, 2001

Dictated in the Open Court

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