

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1142/95 and OA.1226/95

dt.4-2-97

Between

Y. Jagannadham (OA.1142/95)
B. Appa Rao (OA.1226/95)
P.C. Blake -do-

: Applicants

and

1. Dy. General Manager(personnel)
Naval Dockyard, Visakhapatnam
2. Rear Admiral, ASD Naval Dockyard
Visakhapatnam-14
3. Union of India, rep. by
its Secretary, Min. of Defence
New Delhi



: Respondents
(in both the OAs)

Counsel for the applicants
(in both the OAs)

: K. Venkateswara Rao
Advocate

Counsel for the respondents in 1142/95
in 1226/95

: N.R. Devaraj
: N.V. Raghava Reddy
SC for Central Govt.

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

1

Judgement

Oral order (per Hon. Sri R. Rangarajan, Member(A)

Heard Sri YVL Narasimha Murthy, for the applicants in both the OAs and Sri W.Satyanarayana on behalf of Sri N.R. Devaraj and Sri N.V. Raghava Reddy respectively.

1. As the contentions in both the OAs are same, so also the relief asked for, both xx OAs are ~~same they are~~ disposed of by a common order.

2. The applicant in OA.1142/95 was reported to be initially employed as Mazdoor from 7-4-1982 to 26-6-1982 on muster roll basis under the control of the respondents. Thereafter he was discharged and he was once again reengaged from 19-11-1985 and from that day onwards he is working continuously getting a remuneration ranging from B.250/- to 750/-p.m. in the Naval Dockyard Dry Canteen, Visakhapatnam.

3. Both the applicants in OA.1226/95 were initially engaged under the control of respondents from September, 1987 and May, 1988 respectively. They were ~~also~~ employed on honourarium basis in the Dry Canteen of the Dockyard, Visakhapatnam.

4. In both the OAs the applicants prayed that they are working continuously for a long period which entails them to be brought on temporary status paying them at the rate of 1/30th of pay of the minimum of Group-D staff plus DA for work of eight hours a day as admissible from time to time, thereafter regularisation in the cadre of Group-D staff the Naval Dockyard in accordance with the rules. They

relied on the judgement of the Jodhpur Bench of this Tribunal reported in 1996(34)ATC114 (Rajendra Jagarwal and others vs. Union of India) to state that their cases are governed by the judgement of Jodhpur Bench of the Tribunal and same relief granted in that OA may be granted herein also. They also relied on the judgement of the Supreme Court in Parimal Chandra Raha and others vs. Life Insurance Corporation of India and others (1995 (Supp.2) SCC 611) to state that canteen employees are entitled for absorption in the respondents organisation.

5. Both the OAs are filed praying for a direction to the respondents to consider their cases for grant of temporary status and regularisation of their services as per Government of India, Ministry of Personnel PG and Pension Deptt. of Personnel and Training No.51016/2/90-Estt(C) dt.10-9-93 besides payment of daily wages at the rate of 1/30 of the pay of the minimum of Group D pay plus DA for work of eight hours a day as admissible from time to time.

6. A reply has been filed in these cases. The main substance of the reply^{is} that the applicants in both the OAs are not Government servants and they are employed in canteens on honorarium basis. No Government employee is paid honorarium for regular job. They are not paid in the scales of pay allotted to the grade. Hence, this Tribunal has no jurisdiction to deal with the cases as they were not Government employees. ~~If they are not Government employees, the cases cannot be~~ as their cases do not come under Section 14 of the AT Act. They also rely on judgement of this Tribunal in OA.419/94 decided on 30-6-1994 to state that the applicants herein are s

placed and hence their cases are also to be rejected as was done in the above OA.

7. From the contentions of both the sides two issues need to be initially adjudicated. They are :

1) Whether this Bench has jurisdiction to deal with the case; alternatively whether their cases can be brought under Section 14 of the AT Act.

11) Whether the cited cases of Jodhpur Bench and the Supreme Court can be treated as a precedence to decide this issue.

8. We will take up the second issue first. A reading of the judgement of the Jodhpur Bench indicates that the applicants therein were on casual service of the Department and on that basis the whole case was built. The facts do not reveal that they were canteen employees or dry canteen employees of the Defence Deptt. and they were paid honorarium only for that period. Further, Jodhpur Bench relied on various judgements of the Supreme Court. Reading of these Supreme Court cases reveal that the cases cited were employees of canteens established under Factories Act and selling food stuffs during office hours for the convenience of office and other staff. Hence, we are of the opinion that the above cited judgement may not support cases of the applicants.

In the LIC case the point involved was whether the canteen employees who were supplying food to ~~staff~~ ^{staff} and others during office hours were regular Departmental employees of LIC or not. The Supreme Court relied on Khan's case Railways and similar cases where food was supplied during office hours. In the canteen employees who were selling food stuffs, the Apex Court held that they are to be

treated as Departmental employees. In the present case, the applicants herein are canteen employees selling consumable items like soap, shampoo etc. and in no way connected with selling of food stuff to the staff during office hours. These canteens are also not recognised as statutory canteens established under law. Hence, we do not think that the ratio established by these judgement will be supporting the cases of the applicants in these two OAs.

In Railways, Co-operative stores are established as welfare measure for purpose of selling consumable items. Though the Madras Bench of this Tribunal has stated that the employees in those co-op. stores are deemed to be Railway employees, the Apex Court in its judgement reported in 1996 SCC (L&S) 558 (Union of India, Railway Board and others Vs. J.V. Subbaiah and others) had held that the employees of the Railway Co-op. Stores selling consumable articles are not Railway employees and hence set aside the judgement of the Madras Bench of this Tribunal. As the applicants herein are performing similar nature of work of the applicants in the reported Railway case, it has to be held that the applicants in these OAs cannot get their relief in terms of Jodhpur Bench of this Tribunal or in terms of Supreme Court judgement in LIC case.

The next point that arises for consideration is in regard to jurisdiction of this Tribunal to entertain these applications. In this connection, we will draw the attention to the decision of this Bench in OA.383/93 decided on 10-9-1996. In that OA, the applicant therein

was a Selesman in Indian National Canteen Service (for short INCS) Visakhapatnam. The applicant therein challenged the order dated 17-2-1993 of the General Manager imposing punishment of compulsory retirement. It was held in that OA that the applicant being a Salesman of INCS has no jurisdiction to approach this Tribunal for the remedial action under Section 14 of the AT Act. It was held that the Salesman of INCS are not Government servants and hence this Tribunal has no jurisdiction to entertain that case and hence the OA was treated as not maintainable.

9. In the present case, the applicants are engaged as canteen servants in the Naval Dockyard Dry Canteen, Visakhapatnam, and on that analogy in OA.383/93 we cannot entertain these two applications as this Tribunal has no jurisdiction to deal with the applicants who are not Government servants.

10. In view of what is stated above, both the cases have no merits and hence both the cases are dismissed.

11. No costs.

प्रमाणित नकल
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय न्यायालय अधिकारी
Central Administrative Tribunal
केन्द्रीय न्यायालय
HYDERABAD BENCH

SA-
H.M.G.T.
V.C.
CA 1142/1993/220

4-2-97

24-2-97

[Signature]

SA-
H.K.R.M.
A.M.(A.)

Reg!- Review application

IN THE CENTRAL ADMINISTRATIVE TRIBU-
NAL AT :: HYDERABAD

REVIEW APPLN.NO OF 1997

in

O.A.No. 1142 of 1995



REVIEW APPLICATION

Recd
5/3/97
for N. R. Dora

Mr. K. Venkateswara Rao,

Counsel for the Applicant.

May be filed
As
11/3/97