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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

OO.A. NO.34 OF 1995.

DATE OF ORDER:- 25-3-1998.

BETWEEN:

P. Venkateswariu ..

APPLICANT

A N D

1. The Dy.Commissioner of Income Tax,
Aayakar Bhavan, Basheer Bagh,
Range I, Hyderabad.
2. The Commissioner of Income Tax,
Andhra Pradesh I, Aayakar Bhavan,
Basheerbagh, Hyderabad.
3. The Chief Commissioner of
Income Tax, Andhra Pradesh,
Aayakar Bhavan, Basheerbagh,
Hyderabad.
4. Union of India, Rep. by
Secretary, Deptt. of Personnel
and Training, New Delhi.

... RESPONDENTS

Counsel for the applicant : Mr. G.V.R.S.Vara Prasad

Counsel for the respondents : Mr. Kota Bhaskar Rao, CGSC

CORAM :

Honourable Mr. R. Rangarajan, Member(Administrative)

Honourable Mr.B.S.Jai Parameshwar, Member(Judicial)

O R D E R.

(Per Hon.Mr.B.S.Jai Parameshwar, Member(Judl.))

1. Heard Mr.G.V.R.S. Vara Prasad, the learned counsel for the applicant and Mr. K. Bhaskara Rao, the learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 3.1.1995.

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3. The facts giving raise to this O.A. may, in brief, be stated thus :

(a) On 26.11.1973 the applicant joined as Counter Clerk in the Canteen run and maintained by the Income Tax Departmental Employees' Cooperative Society Ltd.- a Society registered under the A.P. Cooperative Societies Act.

(b) The applicant was promoted as Assistant Manager with effect from 3.12.1979.

(c) The applicant was placed under suspension by the Secretary of the Society effective from 29.8.1984 in contemplation of the disciplinary action against him. The disciplinary proceedings were concluded and culminated in the imposition of a penalty ----- of the applicant from the post of Assistant Manager to the Counter Clerk effective from 1.7.1987.

(d) Against the order of said reversion, the applicant submitted an appeal to the appellate authority (Respondent No.3). The appellate authority issued a show cause notice to the applicant as to why the punishment should not be enhanced.

(e) The applicant challenged the show cause notice issued by the appellate authority in O.A.No.784/87 before this Tribunal. On 24.9.1990 this Tribunal allowed the O.A. with an observation that the order of the Tribunal does not in any way preclude the department and/or the Society from proceeding against the applicant after ascertaining/determining the status of the applicant, namely, whether the applicant is an employee of the canteen run by the Society or an employee of the Society.

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(f) By proceedings dated 4.7.1988 the Deputy Registrar of Cooperative Societies constituted a Committee to manage the affairs of the Society; and the duration of the said Committee was from the date of its constitution till an elected Committee came into being.

(g) The Hon'ble Supreme Court in the cases of C.K.Jha and others v. Union of India and P.N.Sharma and others v. Union of India has declared that the employees of the Non-statutory Departmental Canteens of Central Government Offices are entitled to the benefits of the Central Government employees with effect from 1.10.1991. It is submitted that the Society in which the applicant was working passed a resolution to that effect. The copy of the resolution is at page 48 of the O.A.

(h) The applicant was placed under suspension by the respondent No.1 vide his proceedings No.DC/R.1/Canteen/93-94 dated 24.3.1994.

(i) The applicant challenged the order of suspension through his appeal dated 18.4.1994. His appeal was rejected by the order No.Con.751/94/1163 dated 30.5.1994. Against the said rejection, he submitted a revision petition before the respondent No.3. The respondent No.3 rejected the petition and confirmed the order of suspension which came into effect from 24.3.1994.

4. The applicant has filed this O.A. for the following reliefs:-

(i) To declare that the first respondent is not the disciplinary authority of the applicant;
 (ii) To consequently declare the order of suspension dated 24.3.1994 and the Charge Memo dated 23.11.1994 issued by the first respondent in No.DC/R-1/Estt/Canteen/94-95 as highly illegal, arbitrary and without jurisdiction and quash the same.

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(iii) To direct the respondents to treat the entire period of suspension as duty and pay the full pay and allowances.

5. The grounds taken by the applicant in the O.A. are as follows :-

(i) By circular dated 2.4.1993 the Commissioner of Income Tax, A.P.Circle I had constituted a Committee. The Committee held a meeting on 20.8.1993. The Executive Committee in its meeting held on 208.1993 reconstituted the same by inducting the some more members to the Committee. The applicant submits that the meeting held on 20.8.1993 is illegal.

(ii) Another meeting was held on 28.12.1993 in which it was resolved to convert the society into a departmental canteen subject to ratification in the Gerneral Body meeting and subject to fulfilment of the Board's letter dated 28.7.1992. The applicant alleges that the meetings held on 20.8.1993 and 28.12.1993 are illegal and unconstitutional.

(iii) The applicant was served with the Memo. of Charges in Proceedings No.DC/R.1/Estt./Canteen/93-94 dated 23.11.1994.

(iv) The main contention of the applicant is that the meetings held on 20.8.1993 and 28.12.1993 are illegal and unconstitutional; that the respondent No.1 is the not the disciplinary authority; that the Memo of charges pertains to the allegations relating to the work and management of the society; that the applicant is an employee of the canteen and has nothing to do with the society; that the Junior Accounts Officer of the DBDT, Hyderabad had conducted audit of the accounts of the canteen for the years 1985-86 to 1991-92 i.e. upto 31.3.1992 and submitted the audit report dated 3.9.1993(Annexure 21); that as per the audit report, irregularities mentioned in the same were not those

that committed by the applicant and the applicant is in no way responsible for the irregularities mentioned in the audit report. It is submitted that there is no basis for the respondents to initiate the disciplinary action against the applicant and the same has been done by the 1st respondent with an ulterior motive. Thus he submits that the Memorandum of Charges issued by the respondent No.4 is purely without jurisdiction and also issued only with an intention to harass him.

7. The respondents have filed the counter stating that after the decision of the Hon'ble Supreme Court in the case of M.M.R. Khan v. Union of India reported in AIR 1990 SC 937 and the decision in the Writ Petitions Nos.6189-7044 and 9246-55 (C.K. Jah and others v. Union of India and P.N.Sharma and others v. Union of India), the Government of India decided that the employees of the Non-statutory Departmental/Cooperative Canteens/ Tiffin rooms located in the Central Government Offices should be treated as Government servants with effect from 1.10.1991. The employees of these canteens were, therefore, to be extended all benefits as were made available to other Central Government employees of comparable status from 1.10.1991. They further submit that the Counter Clerk is a post equivalent to L.D.Clerk and the Assistant Manager is equivalent to the post of U.D.Clerk; that on and from 1.10.1991 the employees of the Canteens became Government servants and they were governed by the Central Civil Service Rules; that the applicability of the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 to the applicant subsequent to 1.10.1991 did not arise. The conversion of the Cooperative Canteen into Departmental Canteen is because the staff of the canteens have already been declared as Central Government employees and the Central Government employees cannot be allowed

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to work in a Cooperative Canteen etc. It is further stated that with effect from 1.10.1991 the applicant was governed by the CCS(Conduct) Rules and CCS(Conduct) Rules. They further submit that the applicant submitted his representations in respect of his service matters to the departmental authorities; that the representation dated 31.10.1994 to the Staff Grievance Cell of the office of the Chief Commissioner of Income Tax, Andhra Pradesh, Hyderabad clearly indicates that he himself regarded as a Central Government employee; that therefore, the applicant's contention in the O.A. is clearly misleading and untenable. They further submit that the Chief Commissioner of Income Tax is the Cadre Controlling Authority in terms of instructions No.1775 where his functions include Establishment matters upto the level of Group "B". The Chief Commissioner of Income Tax, A.P. in exercise of these powers authorised the Deputy Commissioner of Income Tax, Range-1, Hyderabad to act as the Controlling Officer as well as Drawing and Disbursing Officer over the Andhra Pradesh Income Tax Departmental Canteen employees working in Aayakar Bhavan and Tiffin Rooms situated in the Income Tax Offices at Shapoorwadi and Posnett Bhavan, Hyderabad. The Deputy Commissioner of Income Tax, Range-1, Hyderabad, passed orders specifying the designation, scale of pay and pay as on 1.10.1991 etc. of each of the employees working in the canteen located in the Aayakar Bhavan, Hyderabad, on par, with other Central Government employees of comparable status. The applicant is in no way concerned with the affairs of the Society, its functions and allegations. The Committee, being formed to rectify the day to day functions of the canteens, has no control over the applicant. The employees of those canteens were extended



benefits available to the Central Government employees. The averment that the Managing Committee of the Society which was running the canteen has only power to initiate the disciplinary action against him is unfounded. The several charges levelled against the applicant relate to the violation of CCS(Conduct) Rules by the applicant. The statement of imputation of misconduct furnished to the applicant in support of the Articles of charges clearly disclose the misconduct or negligence committed by the applicant. The administrative instructions of the Canteen apply not only to the canteens set up on the departmental basis and run as per the scheme issued by the Department of Personnel and Training but also to the canteens set up on cooperative basis by a Society of the Government Employees, with the head of the department/office/Establishment or his nominee as Chairman. The charges were framed against the applicant after going through the books of accounts, documents, purchase invoices, self vouchers and other materials maintained by the Canteen and the charges are based on material facts. The charges against the applicant have been framed on the evidence and material available and in accordance with the rules. There was no ulterior motive as such to serve a Charge memo. on the applicant. The allegation of the applicant that the meeting did not take place on 20.8.1993 is not correct. The department had to constitute a Managing Committee to look after the day to day functions of the Canteen and as per GSR 54 the Commissioner of Income Tax has constituted the Managing Committee to run the affairs of the Canteen from time to time, and in view of this, there is no illegality about the constitution of the Managing Committee.

For the above reasons, the respondents submit that the O.A. is liable to be dismissed.



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8. The applicant had filed M.A.No.574/96 praying for an interim order for staying further proceedings in the disciplinary enquiry. On 2.7.1996 this Tribunal considered the interim prayer made by the applicant in the M.A. and observed as under :

"..... It is pointed out that the post of Manager in the canteen carries the scale and status analogous to the cadre of Upper Division Clerk. It is further pointed out that the appointing authority up to the cadre of Tax Assistant is an officer of the rank of Dy.Commissioner of Income Tax. The Dy.Commissioner, Income Tax, Range-I, also passed orders specifying the designation, scale of pay, pay as on 1991 etc., of the employees working in the canteen located in Ayakar Bhavan in view of they being treated enblock as Government Employees on comparable status vide office order dt.34.8.94. It is further stated that the applicant who is thus a government servant with effect from 1.10.91 and has been working under the control of Dy. Commissioner of Income Tax, Range-I, Hyderabad, who is the authority to act as controlling officer over the canteen employees, is the disciplinary authority in competent to issue the cnaigeeas and thus he was fully accept this explanation. In our view merely because the department constituted a canteen committee to look after the management of the canteen that cannot vest the exercise of powers by the various authorities of the department as delegated to them in accordance with the relevant provisions of the rules."

9. The learned counsel for the applicant has submitted the written brief. We have perused the same. His contention is that there are two types in the Central Government. They are - Cooperative Canteens and Departmental Canteens ; that Green Book issued by the Government as to how to run and maintain a Departmental canteen / Cooperative canteen is in force; that the Managing Committee in the case of a Departmental canteen is a body nominated by the Head of the Department; whereas the Managing Committee in the case of a Cooperative canteen is an elected body of the members of the Cooperative Society and in both the Managing Committees, there will be a Secretary nominated from out of the members of the Managing Committee by the Head of the Department and that Secretary is the appointing authority for all the employees in the

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canteens; that the Income Tax Department canteen maintained and run at Hyderabad was a Cooperative canteen and not a Departmental canteen; that whenever a Cooperative canteen is converted into a Departmental canteen, the General Body of the Cooperative Society should decide the matter after audit of the accounts of the canteen; after obtaining no objection certificate from the Sub-Registrar of the Cooperative Societies and after fulfilling certain conditions as per Memo dated 17.12.1992, they have to convert the same; that he is an employee of the society; that the respondent No.1 is neither competent to place him under suspension and also to issue charge memo.; that the office order dated 23.3.93 cannot delegate power of the disciplinary authority; that no specific or general order has been made relating to conferment, realignment and diversement of the jurisdiction; that in the absence of such an order, the authority like the respondent No.1 was not justified to exercise the power of the disciplinary authority; that the charge sheet dated 23.11.1994 is not valid and legal and that therefore, the order of suspension as well as the Charge Memo are liable to be quashed.

10. While considering the interim relief claimed by the applicant we have specifically stated the scope of the proceedings and further this Tribunal declined to grant the relief..

11. Admittedly, on and from 1.10.1991 the applicant became an employee of the Central Government. From that day he is governed by the Central Civil Service Rules. It is further submitted by the respondents that the applicant himself has submitted representations to the respondent No.1 assuming that he is really a Central Government employee. It is no doubt that the applicant became a Central Government employee on and from

1.10.1991. Earlier he was appointed by the Society. In the absence of bye-laws or regulations of the Society, we cannot jump to the conclusion that on and from 1.10.1991 the Society as such ceased to hold any power over its employees. No doubt, since 1.10.1991 the applicant became the employee of the Central Government ^{is} he is found by the CCS Rules. He ^{is} governed by the CCS(CCA)Rules. In fact, the order of suspension was issued by the respondent No.1 after 1.10.1991. The suspension of the applicant was necessitated in contemplation of the disciplinary proceedings.

12. We have perused the Memo. of charges dated 23.11.1994. In the Memo. of charges, there are 10 acts of misconduct/dereliction of duty/financial irregularities committed by the applicant. Ist item of charges relates to the period from 10.8.88 to 31.10.93, IIInd item of the charges relate to the period from 31.10.91 to 31.10.93; IIIrd item of charges relates to the period from October 1991 to October,1993; IVth item of charges relates to the period from 13.9.91 onwards; Vth item of charges relates to the period under which the applicant was working as Assistant Manager of the Canteen prior and subsequent to 1.10.91; VIth item of charges relates to the period from 13.9.91 onwards; VIIth item of charges relates to the period from 22.12.84 on wards. The charges from items VIIth to Xth relate to the period prior and subsequent to 1.10.1991.

13. Earlier to 1.10.1991 the applicant was the employee of the Society. In fact in the O.A.No.784/87 this Tribunal directed the respondents-authorities to proceed against the applicant departmentally after ascertaining or determining his status, namely, whether the applicant is an employee of the canteen run by the Society or an employee of the Society.

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14. On analysis of the misconduct/misbehaviour of the applicant, we found that the Memo. of charges includes the period from which he became an employee of the Central

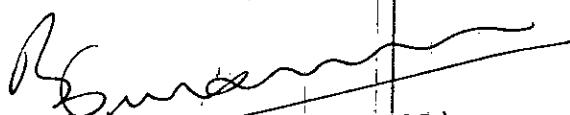
It is for the respondents to consider whether they have competency to enquire into the misconduct/misbehaviour alleged to have been committed by the applicant while, of the Canteen run by the Society or an employee of the Society.

15. The applicant can take all his contentions similar to the contentions raised in the O.A. before the Enquiry Officer. We find no reasons to quash the Charge Memo.

16. The Charge Memo was issued on 23.11.1994. Nearly 3 years and odd have already been elapsed. Probably the enquiry has reached its final stages. Therefore, we do not wish to interfere with the disciplinary

before concluding the disciplinary proceedings must consider these aspects. However, we make it clear that the respondents-authorities are quite competent and entitled to go into the misconduct/misbehaviour of the applicant in the capacity of a Government employee on and from 1.10.1991.

17. In this view of the matter, we find no merits in this O.A. and the O.A. is disposed with the observations made above. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER(JUDICIAL)

25/3/98


(R. RANGARAJAN)
MEMBER(ADMINISTRATIVE)

DATED THE 25th MARCH, 1998

DJ/



Copy to:

1. The Dy. Commissioner of Income Tax, Ayakar Bhavan, Basheerbagh, Range-I, Hyderabad.
2. The Commissioner of Income Tax, Andhra Pradesh I, ~~Ayakar~~ Bhavan, Basheerbagh, Hyderabad.
3. The Chief Commissioner of Income Tax, Andhra Pradesh, Ayakar Bhavan, Basheerbagh, Hyderabad.
4. The Secretary, Dept. of Personnel and Training, New Delhi.
5. One copy to Mr.G.V.R.S.Vara Prasad, Advocate, CAT, Hyderabad.
6. One copy to Mr.Kota Bhaskara Rao, CGSC, CAT, Hyderabad.
7. One copy to HBSJP, M(J), CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 25/3/88

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in
C.A.NO. 04/75

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

