

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL & HYDERABAD BENCH

AT HYDERABAD

O.A.No. 922/97

Date of Order : 4.3.99

BETWEEN :

K.Venkateswar Rao

.. Applicant.

AND

1. Central Provident Fund Commissioner,
9th Floor, Mayur Bhavan, Cannaught Place,
New Delhi.

2. Regional Provident Fund Commissioner,
A.P., Barkatpura, Hyderabad.

.. Respondents.

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Counsel for the Applicant

.. Mr.N.Ramamohana Rao

Counsel for the Respondents

.. Mr.B.Venkateswara Rao

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CORAM :

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.Shiva for Mr.N.Ramamohana Rao, learned counsel
for the applicant and Mr.B.Venkateswara Rao, learned standing
counsel for the respondents.





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2. The applicant in this OA has passed 8th class in 1980 and it is also stated ^{that} he is a Physically Handicapped person. The applicant was initially engaged as Bearer in the Staff Cooperative Canteen at Hyderabad of the respondents organisation on 25.2.94 on daily wages. He was engaged on daily wages till 23.8.94 and thereafter he was given the pay scale of Rs.750-940. The applicant submits that he was discharging his duties to the best of his abilities and ^{was} also given bonus at the end of every ~~each~~ year i.e. for the years 1994-95 and 1995-96.

3. The said canteen ~~was~~ converted as Departmental Canteen by order dated 30.3.95. The applicant was shifted to the departmental canteen from the cooperative canteen along with the other staff working in the canteen.

4. The learned counsel for the applicant submits that the said canteen comes under Type-B canteen as the total strength of the department/office establishment is between 500-699, ~~staff strength~~ ^{staff} strength. On the basis of the perusal of the Administrative Instructions on Departmental Canteens in Offices & Industrial Establishments of the Government second edition 1980 enclosed as Annexure A-1 to the OA. On the basis of the Annexure-3 enclosed to that instructions it is stated that the total number of ^{canteen} ~~of~~ staff in Type-B canteen is ⁶⁶⁵ 50. The applicant was continued in the departmental canteen till 4.7.97. After that the applicant's services were terminated by the impugned order dated 4.7.97

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5. This OA is filed to set aside the impugned order dated 4.7.97 by holding the same as arbitrary, illegal and violative of Articles 14 and 16 of Constitution of India and for a further declaration that the applicant is entitled for regularisation of his services as Bearer in the 2nd respondent office.

6. The main contention of the applicant in this OA is that there is work in the departmental canteen and the total staff strength of that canteen should be ¹⁵50 in view of the Annexure-3 enclosed ^{of} the departmental instructions. As there are only 10 members of staff available there is no need to terminate his services and hence he has to be continued without termination and regularisation ^{granted} on that basis.

7. The next contention of the applicant is that the applicant has been terminated because of the instructions from the Central Office contained in letter dated 24.6.97 and as per that letter the cut off date for regularising the services of those engaged the employees of the departmental canteen is only prior to 1.10.91. That cut off date 1.10.91 has no nexus with the object to ^{be} achieved. It is also the contention of the applicant that there is work load in the canteen as admitted by the respondents themselves in para-8 of the reply and hence the termination order of the applicant has to be set aside and he should be regularised.

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8. A reply has been filed in this OA. The main reason for termination of the applicant in this OA is that in terms of Central Office letter dated 24.6.97 only those casual staff appointed prior to 1.10.91 can be regularised and those appointed later than that ^{date} cannot be regularised. As the applicant was engaged in the year 1995 by the cooperative society when it was ^{under} by the private management the applicant cannot be continued. At the time of his engagement in the year 1995 there was a ban for appointing the staff in the department. The cut off date of 1.10.91 was decided in view of the judgement of the Supreme Court in W.P.Nos.6189-7144 and 8246-55 of 1983 dated 11.10.91. Hence it was decided on that basis to treat only those the employees appointed to the non-statutory departmental/co-operative canteen/tiffin room located in Central Government office earlier to 1.10.91 as Government servant.

9. The Central Office of the respondents organisation has instructed to regularise the services of the employees in the canteen only if they are appointed prior to 1.10.91. It is stated that it has been done in view of the judgement of the Supreme Court in the above referred Writ Petitions. In our opinion that cut off date is only indicative for the departments for which the Apex Court gave some direction. It is not necessary to adhere to that cut off date in all cases. The date 1.10.91 has been given on the facts of those cases and depending upon the circumstances of canteen society placed.

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Hence the adherence to the date of 1.10.91 in our opinion is not a mandatory direction in all cases and has no nexus for continuance of discharge of the erstwhile casual employee of this cooperative canteen.

10. In the present case as per Annexure-1 the total strength is decided as 15 and it is stated that there are only 10 employees in the canteen now. It is also stated in para-8 of the reply that there is work load. Under the circumstances if the strength is less than 15 there is every reason to continue the applicant without termination.

11. In view of that it is not necessary to adhere to the cut off dated 1.10.91 and the staff strength required has to be completely filled by the casual staff who are working in that canteen at the time of taking over the canteen by the departmental authorities.

12. The second contention of the respondents is that there ^{was} is a ban in the department and as the applicant was appointed during the ban period he deemed to have been appointed irregularly. The ban is only for appointment in the department not for the private canteen run by the employees of the department. If such an interpretation is taken probably no private society can function any where in Hyderabad city.


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Hence this contention has no legs to stand and hence rejected out right.

13. In view of what is stated above the applicant has to be given the relief as prayed for in this OA.

14. It is stated by the respondents that in view of the interim order passed on 28.7.97 the applicant has been re-employed w.e.f. 18.6.98. In view of that the next point for consideration is from which date the applicant has to be regularised in the departmental canteen. It is no use to dig the past history in this case. The applicant was continued till 4.7.97 when his services were terminated and he happened to be the junior most amongst those who are serving in the departmental canteen. Hence the applicant's services should be regularised from the date of termination and the period from the date of ^{termination} (regularisation) till he was reinstated into service in view of the interim order should be treated as ~~dis-~~ non and on that basis his further ~~career~~ opportunities should be given to him.

15. With the above direction the OA is disposed of.
No costs.

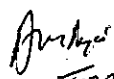

(B.S. JAI PARAMESHWAR)
Member (Judl.)

U.3.99


(R. RANGARAJAN)
Member (Admn.)

Dated : 4th March, 1999

(Dictated in Open Court)


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19/0/99 ✓
1ST AND 2ND COURT

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD:
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (B)

DATED: 4/3/99

ORDER/ JUDGEMENT

MA. / RA. / CP. No.

IN

O.A. NO. 922/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/ REJECTED

NO ORDER AS TO COSTS

SRR

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