

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.283/2014

**Reserved On:04.07.2018
Pronounced on:23.07.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

1. Sh. Rajender Singh,
S/o Late Sh. Chattar Singh,
R/o Gr.II, 264A/18, Sangam Vihar,
New Delhi-110062.
2. Sh. Dheeraj Singh
S/o Late Sh. Jagat Singh,
R/o 1/257, Dakshin Puri,
New Delhi-110062.
3. Sh. Sanjay Kumar
S/o Sh. Anand Mani
R/o A-2/145, Ishwar Colony,
Aaya Nagar, New Delhi-110047. - Applicants

(By Advocate: Shri Manoj V. George with Mrs. Shilpa George)

Vs.

1. Ministry of External Affairs,
Through its Joint Secretary,
Patiala House, New Delhi.
2. Regional Passport Officer,
HUDCO TRICOOT-III,
Bhikaji Cama Place,
New Delhi-110066.
3. Govt. of India
Through Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
Lok Nayak Bhawan,
Khan Market, New Delhi. - Respondents

(By Advocate: Sh. Rajinder Nischal)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicants, three in number, filed the OA seeking a direction to the respondents to regularise their services on the respective posts of which they have been working with all consequential benefits.

2. It is submitted that the applicants no.1 & 2 joined as a Cook and Tea-maker respectively in the departmental canteen of the 2nd respondent-Regional Passport Office (RPO) in the year 1994. Applicant no.3 joined as a Waiter in the same canteen in the year 1997. It is submitted that the departmental canteen is exclusively meant for the employees and officers of the 2nd respondent-RPO. After the Constitutional Bench of the Hon'ble Supreme Court pronounced the judgment in **Secretary, State of Karnataka and Others Vs. Uma Devi and Others, AIR 2006 SC 1806** on 10.04.2006, the 3rd respondent-Ministry of Personnel, Public Grievances and Pensions issued Annexure A-1 OM dated 11.01.2006 to all the Ministries/Department of the Government of India including respondent No.1-Ministry of External Affairs, in which the second respondent is a part, directing to implement the directions of the Hon'ble Apex Court in **Uma Devi** (supra). The 3rd respondent further issued the Annexure A-2 OM dated 21.04.2008 requesting all the Ministries/Departments to examine the whole issue of regularising the qualified casual labourers engaged in

irregular manner in their departmental canteens in terms of the statutory recruitment rules for the posts and who have worked for 10 years or more in duly sanctioned posts but not under cover of orders of Courts/Tribunals, as one time measure on priority basis.

In pursuance of the above, the 2nd respondent-Ministry of External Affairs vide Annexure A-3 letter dated 29.08.2012 and Annexure A-4 dated 04.11.2013 that all the applicants are serving in the canteens for more than about 14 years and requested for consideration of their cases at the earliest. In spite of the above, when the respondents have not regularised the services of the applicants, though they are fully qualified and eligible for the same, in terms of **Uma Devi** (supra), they filed the instant OA.

3. A Division Bench of this Tribunal, vide order dated 29.15.2015, after hearing both sides, dismissed the OA. Writ Petition (C) No.7910/2015 filed by the applicants against the said order of dismissal of the OA was disposed of by the Hon'ble High Court of Delhi by order dated 07.08.2015 as under:-

“The petitioners claim that they have been working in a Canteen at Regional Passport Office for 20 years. An OA was filed before the Central Administrative Tribunal (hereinafter referred to as “CAT”), however their prayer for regularisation was declined. In our view, the Tribunal rightly formulated the issue as to whether the case of the petitioners would be covered by the decision rendered by the Supreme Court of India in the case of **Secretary, State of Karnataka & Ors. v. Uma Devi & Ors., reported at AIR 2006 SC 1806**. We may also notice that the Tribunal has rejected the OA amongst other grounds that the petitioners were unable to produce any relevant document in support of their submission that the Canteen was in operation at the Regional Passport Office.

Counsel for the petitioners submits that the petitioners are illiterate persons and thus could not produce the relevant documents at the time of hearing of the OA. Counsel for the petitioners seeks leave to seek review of the order dated 29.05.2015 passed by the CAT and seeks time to place relevant documents on record.

Having regard to the fact that the petitioners have claimed to have put in about 20 years in service in the Canteen, as prayed we grant leave to the petitioners to approach the Tribunal by making an application for review of the decision and also file an application for producing the relevant documents. The writ petition stands disposed of in above terms.”

4. In pursuance of the said order, the applicants filed RA No.219/2015 which was allowed by this Tribunal on 03.10.2017 as under:-

“9. In the circumstances and in view of the orders of the Hon’ble High Court of Delhi in WP(C) No.7510/2015, the Review Application is allowed and consequently, the order dated 29.05.2015 in OA No.283/2014 is recalled and the OA is restored to its original file and the same shall be listed on 05.01.2018 for fresh hearing.

10. The applicants may file an additional affidavit along with the documents on which they are placing reliance within four weeks after service on the other side and the respondents may file their additional reply affidavit along with documents, if any, within four weeks there from”.

5. In terms of the aforesaid order in the Review Application, the applicants filed the additional affidavit enclosing number of documents and the respondents even after availing substantial time not chosen to dispute the said documents filed by the applicants along with the said additional affidavit.

6. Heard Shri Manoj V. George with Mrs. Shilpa George, learned counsel for the applicants and Shri Rajinder Nischal, learned counsel for the respondents and perused the pleadings on record.

7. It is the specific case of the applicants that they have been working in the departmental canteen of the 2nd respondent-RPO, on casual basis, since 1994 (applicants No.1 and 2) and 1997 (applicant No.3), respectively. It is their specific case that the canteen in which they have been continuously working for all these years is a departmental canteen of the respondents and run exclusively for the service of its employees and officers. It is further submitted that they have been working against the sanctioned posts and without the support of any order from any court. It is also submitted that they are fully qualified and eligible for regularisation of their services in terms of the Annexure P-21, i.e., the Ministry of External Affairs, Central Passport Organisation, Staff Canteen, Regional Passport Office Delhi (Group 'C' and 'D') Posts Recruitment Rules 2009. It is also submitted that the applicants fulfil the conditions mentioned by the Hon'ble Apex Court in its para 44 in **Uma Devi** (supra) and accordingly entitled for regularisation of their services with effect from the date of expiry of 6 months from the date of pronouncement of the judgment in **Uma Devi** (supra).

8. Per contra, the learned counsel Shri Rajinder Nischal appearing for the respondents would submit that **Uma Devi** (supra) has no application to the applicants case as they are not casual/temporary/daily wage employees of the 2nd respondent –

RPO, Delhi. The applicants were simply allowed to carry out their own business of providing tea and snacks etc. against payment to the RPO staff. In short, the applicants were permitted to run their private canteen in the 2nd respondent's office premises as a welfare measure and they were not working in the departmental canteen of the 2nd respondent. It is further submitted that there were no sanctioned posts of Cook/Tea Maker/Waiter etc. in the respondents organisation. Even if **Uma Devi** (supra) is applicable to the applicants, they are liable to be terminated under the said judgment but para 44 of the said judgment has no application to the applicants as they have not fulfilled the requirements enunciated therein.

9. In the backdrop of the above referred pleadings and the orders of the Hon'ble High Court, it is necessary to examine the various documents filed by the applicants along with their additional affidavit.

10. Annexure P-9 (Colly) certificates issued by various Assistant Passport Officers/Deputy Passport Officers and the All India Passport Employees Association during the period ranging from 1997 to 2010 confirmed that the applicants have been working in the canteen during the period claimed by them in the OA. Annexure P-17 to P-20 indicate that a Departmental Canteen ("D" Type) was set-up in the premises of the 2nd respondents office-RPO with due

approval of the 1st respondent-Ministry of External Affairs and that the applicants who were working in the canteen were recommended for absorption against specified posts of Cook/Tea or Coffee Maker/Wash Boy/Dish Cleaner. Annexure P-21 is the Gazette Notification dated 28.08.2009 of the Ministry of External Affairs, Central Passport Organisation, Staff Canteen, Regional Passport Office Delhi (Group 'C' and Group 'D') Posts Recruitment Rules, 2009, issued in supersession of the Ministry of External Affairs, Central Passport Organisation (Group 'D' posts) Recruitment Rules, 2001. The said document indicates that the employees who were working in the departmental canteens were covered under the rules wherein the duties of Wash Boy (Dish Cleaner), Bearer, Tea/Coffee Maker and Halwai-cum-Cook were sanctioned among other posts against which the applicants have been working for the last more than 2 decades. Annexure P-24 Office Memorandum dated 06.09.2010 of the 3rd respondent, Ministry of Personnel, Public Grievances and Pensions indicates that keeping in view all the recommendations of the 6th CPC and other relevant factors requesting all the Ministries/Departments to revise/amend/frame Recruitment Rules in respect of various categories of Group 'D' and 'C' posts in Non Statutory Departmental Canteens/Tiffin Rooms situated in Central Government Offices and registered with Director (Canteens) and forwarded the revised Model Recruitment Rules.

11. The documents referred hereinabove coupled with other documents filed along with additional affidavit, clearly indicate and confirm the existence of departmental canteen in the 2nd respondent's office-RPO, Delhi since 1994 and the working of the applicants therein continuously till date. It was further confirmed that the applicants have been working against the existing sanctioned posts and that too without the support of any court orders.

12. The Hon'ble Apex Court in **Uma Devi** (supra) at para 44 has observed as under:-

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme".

13. In the backdrop of the above referred facts of the case read with the decision of the Hon'ble Apex Court in **Uma Devi** (supra), it

is manifest that the applicants are entitled for consideration of their cases for regularisation, in terms of **Uma Devi** (supra).

14. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to consider the cases of the applicants in terms of para 44 of **Uma Devi** (supra) with all consequential benefits. However, the applicants are entitled for payment of arrears with effect from the date of filing of the OA, i.e., 24.01.2014. This exercise shall be completed within 3 months from the date of receipt of a copy of this order. No costs.

(PARVEEN MAHAJAN)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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