

#

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.04.2023

Judgment delivered on: 25.05.2023

+ **W.P.(C) 11733/2019**

CENTRAL PWD ENGINEERS ASSOCIATION AND ORS.

..... Petitioners

Through: Mr. C. Mohan Rao, Sr. Adv. with Mr.
Lokesh Kumar Sharma, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Ruchir Mishra, Mr. Mukesh Kr.
Tiwari, Ms. Reba Jena Mishra and
Ms. Poonam Mishra, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this writ petition is to an order dated October 31, 2019 passed by the Central Administrative Tribunal (hereinafter referred to as the “Tribunal”) whereby the continuation of recognition of the petitioner Association (i.e. Central PWD Engineers Association) as claimed by the petitioners was denied on the ground that the petitioners did not file the required documents as per schedule specified under Rule 6(e) of the **Central Civil Services (Recognition of Service Associations) Rules, 1993** (hereinafter referred to as the “CCS (RSA) Rules”). Accordingly, it was held that petitioners were not entitled to claim the benefits accorded to a

recognized Association. However, since the Association later on filed the documents which were under active consideration of the respondent, they were directed to expedite re-verification and consider continuation of recognition of the Association.

2. In brief, the petitioners preferred an O.A. before the Tribunal claiming the Central PWD Engineers Association to be one of the oldest Service Associations espousing the cause of promotee Engineers in CPWD, having Assistant Engineers, promotee Executive Engineers and Superintending Engineers as its Members. The Association is stated to have been formed way back in the early 1960s. In the year 1993, CCS (RSA) Rules were promulgated which provided for recognition of service Associations with the object of promoting common service interest of its members. An Association representing 35% of the total number of the category of employees forming the Association was entitled for recognition as a primary member. A secondary Association commanding at least 15% of the membership of the category of the employees forming the Association, could also be granted recognition under the Rules.

3. It is the case of the petitioners that following the promulgation of the CCS (RSA) Rules, 1993 the petitioner Association was granted recognition by respondent No. 1 (Union of India), through Secretary, Ministry of Housing and Urban Affairs on October 04, 1996. After carrying out the re-verification of membership, respondent (Secretary, Ministry of Housing and Urban Affairs) approved continuance of recognition of the petitioner Association for a further period of five years vide letter dated July 27, 2004.

4. The continuance of recognition granted to the petitioner Association being valid for a period of five years from July 27, 2004 to 2009, the verification process was to be completed by the respondents in the year 2009. It is claimed by the petitioners that despite repeatedly submitting the details of its members, the respondents failed to carry out the re-verification process and grant renewal of recognition. Reference is also made to orders passed by this Court in another case titled as *All India CPWD Engineers Association v. Union of India and Others*, WP(C) No.1101/2007 on February 19, 2000. Further, no deficiency is stated to have been pointed out by the respondents for correction. Reliance is also placed upon letters dated August 02, 2011, March 26, 2012 and December 03, 2015 in this regard.

5. It is further the case of the petitioners that once an Association submits the details of its members, it is for the government to carry out the verification and grant recognition/renewal. The same could only be withdrawn if the conditions set out in Rules 5, 6 or 7 of CCS (RSA) Rules are violated in any manner, after giving an opportunity to the Association.

6. The benefits of recognition are further stated to have been denied to petitioner Association vide OM dated January 09, 2019 issued by Director General, CPWD as it was notified that only the three Associations having furnished the requisite details as referred in aforesaid OM were having a valid recognition.

7. Aggrieved by the fact of keeping the issue of renewal of recognition pending since 2009 despite issuance of several letters, petitioners preferred O.A. before the Tribunal with the following prayers:

“(a) direct the respondent no. 1 to renew the recognition granted to the Applicant Association;

(b) quash the Office Memorandum of respondent no. 2 dated 9.1.2019 qua the Applicant Association;

(c) quash the transfer order dated 11.1.2019 transferring the President and the General Secretary of the Applicant Association out of Head Quarters;

(d) Any other further order or orders as this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case.”

8. Vide impugned order dated October 31, 2019, the Tribunal disposed of the O.A. in terms of para 4 to 8 of the order, which may be reproduced for reference:-

“4. The contention of the applicants is that their association is validly recognized as on today. The recognition of the association was never withdrawn. But, however, continuation of the recognition of the association is subject to the conditions enumerated in Rule 6 of the above stated rules. Rule 6 (e) states that for continuation of the recognition the association had to furnish list of members and office bearers, audited statement of accounts of the association annually through proper channel before 1st of July of every year. The relevant rule is extracted below:-

“6(e). a list of members and office bearers, and up-to-date date copy of the rules and an audited statement of accounts of the Service Association shall be furnished to the Government annually through proper channel after the general annual meeting so as to reach the Government before the 1st day of July each year.”

At the time of hearing the counsel for the applicants submitted that the association has not filed the required documents as per Rule 6 (e) on 01.07.2018. The further contention of the applicants is that the respondents have neither given any Show Cause Notice (SCN) for withdrawing the recognition of the applicants association nor they have passed any order withdrawing the recognition.

5. The counsel for the respondents strenuously and vehemently contended that the applicants have not filed documents as required under above stated rule 6 (e) of the said rules and that on 10.12.2018, 18.12.2018 and 26.12.2018, a notice was issued on the official website directing all the service associations to file the said required documents as per rule 6 (e) of the above stated rules and as the applicants association has not

supplied the said documents, their recognition could not held to be continued. At the time of hearing, the counsel for the applicants submitted that instead of 01.07.2018 the applicants association have submitted the required documents on 29.12.2018 as per Annexure R-XVI and it is also brought to our notice that by an OM dated 04.04.2019, the respondents have stated that the two associations including the applicants association have submitted the required documents as per above stated rule 6 (e) and that the said documents are under scrutiny and the re-verification process of regarding the recognition of the association is under process. The said OM is extracted below:-

"Subject: Implementation of Para -6(e) of Notification dated November, 1993 regarding CCS (RSA) Rules, 1993 by Service Associations in CPWD.

This is in continuation to the above cited OM (Modified) dated 3.4.2019. After the issue of the OM dated 9.1.2019 on the above subject vide which the status of recognition or submission of documents as per para 6(e) of the DOPT OM, two Service Association i.e. Central PWD Engineers Association and All the India CPWD Engineers Association have submitted the required documents as per para 6(e) of the DOPT OM. The renewal of recognition of the above 2 Associations based on re-verification of their membership for the year 2014-15 is also under scrutiny in the Directorate.

Another Association i.e. CPWD Junior Engineers Association (India) has submitted the documents for renewal of their recognition as per DOPT rules which is also under scrutiny in the Directorate.

Orders for the re-verification process for renewal/continuation of all already recognised Association will be issued separately, as per relevant rules.

All the cadre controlling units are to take necessary action accordingly.

This issues with the approval of Director General, CPWD"

6. From the above facts, it is clear that from 2009 onwards the continuation of the recognition of the applicants Association is not known and in view of the impugned order dated 09.01.2019 the applicants Association was not accorded continuation of recognition. As the applicants Association was not accorded continuation of recognition some of the benefits of recognition enjoined by the applicants Association namely non-transfer of the President and General Secretary of the applicants Association was not accorded and they were transferred vide order dated 11.01.2019. The applicants Association has prayed for

cancellation of the said transfer orders of President and the General Secretary as one of the reliefs.

7. In view of the facts and circumstances narrated above, we are of the view that continuation of recognition of the applicants Association cannot be claimed by the applicants in view of the admitted fact that they have not filed the required documents as per schedule specified under Rule 6(e) of the said Rules and they cannot, therefore, claim the benefits accorded to the recognized Association. But, however, as they have filed the said documents later in December and the said documents are under active consideration of the respondents in view of the above extracted OM dated 4.4.2019, we direct the respondents to expedite re-verification and consideration of continuation of recognition of the applicants Association.

8. Accordingly, the OA is disposed of. MAs pending, if any, stand disposed of. No order as to costs.

CP 101/2019

In view of the above order, CP is closed and interim order dated 24.01.2019 is vacated.”

9. The present writ petition has been thereafter preferred by the petitioners with the following prayers:-

“a) Issue a writ of certiorari or any other Writ |or order partially quashing the judgment and order of the Central Administrative Tribunal (Principal Bench) New Delhi passed in OA No.229 of 2019 dated 31.10.2019;

b) issue an appropriate writ or order quashing the impugned CM dated 9.1.2019, transfer orders dated 11.1.2019 and all consequential orders based on CM dated. 9.1.2019 and transfer orders dated 11.1.2019 issued by the respondent No.2; and”

10. It is urged by learned counsel for the petitioners that respondent No.2 failed in its duty and responsibility to carry out re-verification of membership of the petitioner Association as per CCS (RSA) Rules, 1993. Further, O.M. dated January 09, 2019 is actuated with *malafides*, followed by transfer order dated January 11, 2019 transferring petitioner No.2 & 3 out of headquarters (i.e. Delhi) on the ground that petitioner Association is not a

recognized Association. The membership of the petitioner Association is further claimed to be 50% of the working cadre strength in the year 2009/2010 and, as such, the respondents were required to continue the recognition. It is claimed that recognition of service Association would not automatically lapse on non compliance with Rule 6(e) of the Rules and recognition could not have been withdrawn without affording an opportunity of hearing to the petitioner Association. It is vehemently contended that the Rules envisage that once recognition is granted, the same continues unless withdrawn following the procedure prescribed in Rule 8 of CCS (RSA) Rules. It is also pointed out that only the Central Government can accord and withdraw recognition and DG, CPWD has no power to declare that an Association did not have a valid recognition.

It is also pointed out that sub-rule (1) of Rule 7 only permitted the Central Government to determine the intervals at which verification/re-verification of membership is to be carried out and no power is vested on the respondents to determine the issue of recognition or validity of recognition that was once granted by the Central Government. In terms of OM dated February 11, 2002, respondent is stated to be guilty of dereliction of duty by violating the mandate of the said OM as it failed to carry out the re-verification.

It is contended that the 1993 CCS (RSA) Rules do not provide for automatic lapse of recognition and the Rules have to be interpreted to give effect to the said meaning. In support of the contentions, reliance is placed upon *Commissioner of Customs (Import) Mumbai vs. Dilip Kumar and*

Company and Others, (2018) 9 SCC 1, Vijay Narayan Thatte and Others vs. State of Maharashtra and Others, (2009) 9 SCC 92, State of Andhra Pradesh vs. Linde India Limited, (2020) 16 SCC 335, Navjyoti Cooperative Housing Society vs. Union of India, (1992) 4 SCC 477.

11. Aggrieved by judgment and order of the Tribunal dated October 31, 2019, the petitioners preferred the present Writ Petition, wherein an application for interim orders against the transfer order of petitioner No.2 & 3 was dismissed. Further, on preferring SLP(C) No.27656/2019, directions were issued by the Hon'ble Supreme Court of India vide order dated January 10, 2020 that petitioners would be retained in their place of posting (Delhi) till disposal of the writ petition by this Court. Further, if it is found that petitioners Association is not entitled to recognition, obviously, petitioner No.2 & 3 will have to join their place of posting. Pursuant to the directions of the Hon'ble Supreme Court, petitioner No.2 & 3 are stated to have been directed to join their duties on February 14, 2020.

12. It may be noticed that during the pendency of Writ Petition, respondent No.2 issued an O.M. dated April 16, 2020 stating that despite long delay, the exercise of re-verification of membership has not been concluded and many employees have left the Association and decided to conduct re-verification on the basis of membership of the year 2020-21. Further, following the re-verification conducted on the basis of membership in September 2020, recognition was granted to the petitioner Association on January 18, 2021 for a period of five years.

13. On the other hand, it is submitted by learned counsel for the respondents that in terms of the instructions/guidelines issued by DoPT vide OM No.2/13/98-JCA dated February 11, 2002 the Ministry of Housing and Urban Affairs vide letter dated April 27, 2004 had approved the continuation of the recognition of the petitioner Association under the provisions contained in CCS (RSA) Rules, 1993 for a period of five years from the date of issue of said OM. It is emphasized that in terms of DoPT OM dated February 11, 2002 it has been provided that the recognition of the Service Associations/Unions after re-verification of membership, in terms of para 3 of the DoPT OM No.2/13/98-JCA dated April 25, 2001 shall be valid for a further period of five years from the date of orders recognizing the Associations/Unions, so notified. Further, the process of re-verification is initiated in advance before the expiry of five years. As such, it is contended that the recognition of the petitioner Association expired on July 26, 2009. The petitioner Association is stated to have applied for continuation of their recognition as Service Association only vide letter dated March 28, 2011, with a delay of one year and eight months after the date of expiry of their recognition. It is pointed out that as per instructions contained in DoPT OM No.2/8/91-JCA dated October 11, 1991 it has been mentioned that the recognized Service Associations are expected to regulate the activities in accordance with the rules of its constitution. Further, one of the conditions for recognition in terms of Rule 6(e) of CCS (RSA) Rules, 1993 is that Association should furnish to the government annually, before the last date of July each year, a list of members and officer bearers and updated copy of the rules and audited statement of accounts. If the Association fails to

comply with any of the conditions of recognition, it would lose the facilities given to the recognized Association. In view of above, it is submitted that the entitlement of the facilities/benefits of a recognized Association during the pendency of renewal, does not arise.

A letter No.4/1/2010 EC-III dated November 21, 2013 is also stated to have been forwarded to the General Secretary of the Association wherein the deficiencies were duly pointed out.

The required information is also stated to have been sought vide the Directorate's OM 4/9/2003-EC III dated June 03, 2014, subsequent corrigendum dated June 13, 2014 and letter dated September 23, 2014 which were endorsed to the Association. Further, since the mandatory information as required under Rule 6(e) of CCS (RSA) Rules was not received the information was sought vide OM dated November 19, 2018, OM dated December 10, 2018, December 18, 2018 and December 26, 2018 from all Service Associations either recognized or unrecognized through CPWD official website.

The information regarding list of officer bearers and copy of bye-laws is stated to have been submitted by the petitioner Association vide letter dated December 29, 2018. Further, it was intimated therein that respective DDOs all over the country have been instructed for deduction of their annual subscription and a consolidated list would be submitted as and when a confirmation is received from the DDOs. It was further informed vide aforesaid communication by petitioners that the audited statement of accounts would be submitted after next General Annual Meeting.

It is contended that keeping in view the instructions contained in DoPT OM No. 2/8/91-JCA dated October 11, 1991 and the transfer policy guidelines of the department derived vide OM dated May 25, 2016 and OM dated September 07, 2018, the transfer of the office bearers of an unrecognized Association is legal.

14. The contentions raised on behalf of the petitioner Association raise the issue regarding the status of recognized Service Association during the pendency of re-verification of membership. Consequentially, whether a recognized Service Association would lose its recognition and benefits, to which the Association is entitled, during the pendency of re-verification of the membership.

15. To appreciate the contentions raised on behalf of the parties, it may be noticed that the CCS (RSA) Rules, 1993 have been enacted in exercise of powers conferred by proviso to Article 309 and clause (5) of Article 148 of the Constitution of India and in supersession of the Central Civil Services (Recognition of Service Associations) Rules, 1959. The Rules have the same force as a statute though made by the Executive under the proviso to Article 309 of the Constitution of India. Admittedly, the Rules apply to Service Associations of all government servants including the civilian government servants in the defence forces except to the industrial employees of the Ministry of Railway and the workers employed in defence installation of Ministry of Defence for whom separate rules of recognition exist. It is important to note that in terms of Rule 4 of CCS (RSA) Rules, 1993 a Service Association or Federation which has been recognized by the

government before the commencement of these Rules and in respect of which the recognition is subsisting at such commencement, the recognition only continued for a period of one year from such commencement or till the date the recognition is withdrawn, whichever is earlier.

16. It may further be noticed that Rule 5 of the CCS (RSA) Rules prescribes the conditions for recognition of Service Association, Rule 6 provides for conditions subject to which recognition is continued, Rule 7 deals with verification of membership and Rule 8 empowers for withdrawal of recognition. The aforesaid Rules may be quoted in extenso for convenience, as the same have been referred to, by both the learned counsel for the petitioners as well as the respondents.

“5. Conditions for recognition of Service Associations: A Service Association which fulfills the following conditions may be recognized by the Government, namely:-

- (a) *An application for recognition of Service Association has been made to the Government containing Memorandum of Association, Constitution, Bye-laws of the Association, Names of Office-Bearers, total membership and any other information as may be required by the Government;*
- (b) *the Service Association has been formed primarily with the object of promoting the common service interest of its members;*
- (c) *membership of the Service Association has been restricted to a distinct category of Government servants having common interest, all such Government servants' being eligible for member-ship of the Service Association;*
- (d) (i) *The Association re-presents mini-mum 35 per cent of total number of a category of employees provided that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognized if it commands at least 15 per cent member-ship;*

(ii) *The membership of the Government servant shall be automatically discontinued on his ceasing to belong to such category;*

(e) *Government employees who are in service shall be members or office bearers of the Service Association;*

(f) *the Service Association shall not be formed to represent the interests, or on the basis, of any caste, tribe or religious denomination or of any group within or section of such caste, tribe or religious denomination;*

(g) *the Executive of the Service Association has been appointed from amongst the members only; and h. the funds of the Service Association consist exclusively of subscriptions from members and grants, if any, made by the Government, and are applied only for the furtherance of the objects of the Service Association.*

6. Conditions subject to which recognition is continued: *Every Service Association recognized under these Rules shall comply with the following conditions, namely:-*

(a) *the Service Association shall not send any representation or deputation except in connection with a matter which is of common interest to members of the Service Association.*

(b) *the Service Association shall not espouse or support the cause of individual Government Servants relating to service matters;*

(c) *the Service Association shall not maintain any political fund or lend itself to the propagation of the views of any political party or a member of such party;*

(d) *all representations by the Service Association shall be submitted through proper channel and shall be addressed to the Secretary to the Government/Head of the Organisation or Head of the Department or office;*

(e) ***a list of members and office bearers and up-to-date copy of the rules and an audited statement of accounts of the Service Association shall be furnished to the Government annually through proper channel after the general annual meeting so as to reach the Government before the 1st day of July each year.***

(f) ***the Service Association shall abide by, and comply with all the provisions of its constitution/by-laws;***

(g) *Any amendment in the constitution/by-laws of the Service Associations, after its recognition under these Rules, shall be made only with the prior approval of the Government;*

(h) *The Service Association shall not start or publish any periodical, magazine or bulletin without the previous approval of the Government;*

(i) *The Service Association shall cease to publish any periodical, magazine or bulletin, if directed by the Government to do so, on the ground that the publication thereof is pre-judicial to the interests of the Central Government, the Government of any State or any Government authority, or to good relations between the Government of India and the Government of India and the Government of a foreign state;*

(j) *the Service Association shall not address any communication to, or enter into correspondence with, a foreign authority except through the Government which shall have the right to withhold it;*

(k) *the Service Association shall not do any act or assist in the doing of any act which, if done by a Government servant, would contravene any or the provisions of the Central Civil Services (Conduct) Rules, 1964; and*

(l) *Communications addressed by the Service Association or by any office-bearer on its behalf to the Government or a Government authority shall not contain any disrespectful or improper language.*

7. Verification of membership: (1) *The verification of membership for the purpose of recognition of a Service Association shall be done by the CheckOff-System in pay-rolls at such intervals and in such manner as the Government may by order prescribe.*

(2) *The Government may, at any time, order a special verification of membership if it is of the opinion, after an enquiry, that the Service Association does not have the membership required under sub-clause (i) of clause (d) of rule 5.*

8. Withdrawal of Recognition: *If, in the opinion of the Government, a Service Association recognized under these rules has failed to comply with any of the conditions set out in rule 5 or rule 6 or rule 7 the Government may after giving an opportunity to the Service Association to present its case, withdraw the recognition accorded to such Association."*

17. Though the CCS (RSA) Rules, 1993 have been framed under proviso to Article 309 read with clause (5) of Article 148 of the Constitution of India, the same stands supplanted by the administrative OM/circulars including OM No.2/13/98-JCA dated February 11, 2002 and may be quoted for reference as referred to and relied by the learned counsels:-

“O.M. No.2/13/98-JCA, dated 11-2-2002

Re-verification of membership of Service Associations under the CCS (RSA) Rules, 1993

The undersigned is directed to refer to this Department’s O.M. of even number, dated 24-5-2001 on the subject mentioned above and to say that the recognition of the Service Associations/Unions after re-verification of membership in terms of Para 3 of the afore-mentioned instructions, shall be valid for a further period of five years from the date of orders recognizing the Associations/Unions are so notified. It may, however, be ensured that the process of re-verification is initiated in advance before expiry of the period of five years.

2. *After issue of the instructions of 24-5-2001, there may be instance where the two year period of initial recognition might have expired by now or might expire in the near future. In all such cases, the respective Ministries/Departments, etc., may draw up a schedule to carry out re-verification of membership, wherever necessary. After such re-verification, the recognition shall be valid for a period of five years from the date so notified.*

3. *The above instructions may be brought to the notice of all concerned.”*

18. The aforesaid OM provides that the recognition of the Service Associations/Unions after re-verification of membership in terms of para 3 of OM of even number dated May 24, 2001 shall be valid for a period of ‘five years’ from the date of orders recognizing the Associations/Unions so notified. It also postulates that the process of re-verification is to be initiated in advance before expiry of period of five years. As such, it is implicit that the government had a clear intention that the recognition is only valid for a specific period as notified and for the purpose of continuation of recognition the process of re-verification is mandatory which is to be carried out in accordance with rules.

19. It may further be noticed that the distinction between the ‘*continuation of recognition*’ and ‘*withdrawal*’ needs to be kept in perspective which is

also implicit from a bare reading of Rule 5&6 of CCS (RSA) Rules, 1993. The condition for recognition of Service Associations does not confer an automatic 'continuation of recognition' of Service Associations since the 'continuation of recognition' is further subject to compliance of clauses 6(a) to (l) of the CCS (RSA) Rules, 1993. In the aforesaid context, it is imperative to refer to Rule 6(e) of CCS (RSA) Rules which provides that list of members and office bearers and up-to-date copy of the rules and an audited statement of accounts of the Service Associations shall be furnished to the government annually through proper channel, after the Annual General Meeting, so as to reach the government before the 1st day of July each year. The contention raised by learned counsel for the petitioners that 'non continuation of the recognition' amounts to 'withdrawal' appears to be misplaced since the 'continuation of recognition' commences after the period for which recognition is granted is over, whereas the 'withdrawal' of recognition may take place in the eventualities provided for in Rule 5 or 6 of CCS (RSA) Rules, 1993 during the currency of recognition.

The principles of law of interpretation as referred to in the judgments relied by learned counsel for the petitioners, are well settled and the proposition in this regard cannot be disputed. As observed by the Hon'ble Apex Court in *State of Rajasthan v. Mrs. Leela Jain*, AIR 1965 S.C. 1296, unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court.

20. In the facts and circumstances, we are of the considered opinion that it is not a case of 'withdrawal' of recognition but the petitioner Association has been treated as 'unrecognized' since the continuation of recognition of Service Association was dependent upon compliance of Rule 6(e) of CCS (RSA) Rules, 1993 by the Association, which requires the furnishing of a list of members and office bearers and up-to-date copy of the rules and an audited statement of accounts of the Service Association after the Annual General Meeting, so as to reach the government before the 1st day of July each year. Merely because the verification of membership for the purpose of Service Association was to be done by check-off system in pay rolls at such intervals and in the manner as prescribed by the government in Rule 7 of the CCS (RSA) Rules, 1993, does not absolve the petitioner Association of complying with the mandatory provision of Rule 6(e) of the CCS (RSA) Rules, 1993. The stand of the respondents reflected in letter No.4/1/2010 EC-III dated November 21, 2013 may also be beneficially reproduced:-

"3. Vide letter dated 28.03.2011 and 26.03.2012, you have submitted a list of 1721 AEs/EEs claiming that they were the member of your Association during 2009-10. All India CPWD Engineers Association also submitted a list of AEs/EEs claiming that some of the members of Central PWD Engineers Association are also the member of their Association & also deduction of membership of some of the members are not deducted from their payrolls. The name of such AEs/EEs were deleted from your list and a figure of 1118 was arrived at. The details of letter of DDOs regarding deduction of membership were checked thoroughly for these 1118 members and it is observed that subscription in respect of 611 members have not been deducted from their pay rolls. After deducting the above numbers of members from the total membership submitted by you (also after deducting the numbers of dual membership), you have had 507 members of your Association in place of requirement of 1080 members' details of the list is enclosed. Further, the second letter regarding member of your Association was given after the gap of one year. It means you were in the knowledge that you have not the required number of

member at the time of submission of first list. Even the document submitted by you in your support do not conform to the documents required for verification of the membership such as authorization to the DDO for effecting the recovery from salary. Most of the documents received in this office related to the information received by you through RTI applications.

4. In view of above, it is observed that your association has failed to furnish the required number of members whose membership has been deducted from the pay roll during 2009-2010 in accordance with prescribed DOPT guidelines. You are hereby again given a chance to furnish and establish the details of your members for the year 2009-10 whose contribution have been deducted in favour of your Association from their pay rolls as per check off system within 15 days of issue of this letter failing which it will be assumed that your association did not have the required 1080 (35% of 3086) members during the year 2009-10.”

In the absence of any request for continuation of membership for a period of one year and eight months by the petitioner Association as reflected in the stand taken by the respondents and for want of furnishing of requisite documents by the petitioners, the respondent could not have taken up the continuation of recognition of the petitioner Association.

21. Learned counsel for the petitioners has next contended that the orders for grant/continuation of recognition or withdrawal of recognition could have only been made by the ‘Government’ which means the Central Government as per Rule 2(a) of CCS (RSA) Rules, 1993. It is urged that decision for ‘non continuation of recognition’ could not have been taken by DG, CPWD in terms of OM No.18/3/2018 dated January 09, 2019 as the Competent Authority remains the Central Government in terms of definition of ‘Government’ as per Rule 2(a) of CCS (RSA) Rules, 1993.

On the other hand, it has been submitted by learned counsel for the respondents that in terms of OM No.2/13/98-JCA dated February 11, 2002,

the respective ministries/departments were required to draw up a schedule to carry out re-verification of membership and the deficiencies had been communicated to the petitioner Association vide letter No.04/I/2010-EC-III dated November 21, 2013. The same also conveyed that the letter may be treated as notice to the Association for proving the required membership for re-validating the recognition and only consequentially thereafter further action for de-recognizing of the Association was to be taken, as per rules. Referring to OM No.18/3/2018 dated January 09, 2019 it has been pointed out that despite reminders of even number dated December 10, 2018, December 18, 2018 and December 26, 2018, the documents were not supplied by the petitioner Association and as such it was informed that only three Associations mentioned therein were having valid recognition. Further, the cadre controlling authorities were requested to take note regarding 'unrecognized Service Associations' who had neither furnished copies of latest recognition letter nor the details as per para 6(e) of the notification dated November 05, 1993. However, it is not disputed that the said letter was issued with the approval of DG, CPWD and not with approval of 'Central Government'.

22. As per Rule 2(a) of CCS (RSA) Rules, 1993 'Government' means the 'Central Government'. Further, Rule 5 of CCS (RSA) Rules, 1993 provides that the Service Associations which fulfil the conditions laid therein may be recognized by the 'Government'. Under Rule 8, the 'Government' is empowered to withdraw the recognition in case the service associations recognized under the Rules, fail to comply any of the conditions set in Rule

5, 6 or 7 of the CCS (RSA) Rules, 1993 after giving any opportunity to the service associations.

23. Reference in this regard may also be made to definition of ‘Central Government’ as provided in Section 3(8)(b) of the General Clauses Act, 1897 which provides that in relation to anything done or to be done after the commencement of the Constitution, ‘Central Government’ means the President and shall include

*“[3. Definitions.-
(8) “Central Government” shall,—
(a)
(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,—
(i) in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause; ¹[***]
(ii) in relation to the administration of a Part C State ²[before the commencement of the Constitution (Seventh Amendment) Act, 1956], the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be;] ²[and]
³(iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;]”*

It is imperative to notice that even the letter dated January 18, 2021 granting recognition to the Petitioner Association for a period of five years w.e.f. the issue of the said letter has been issued by the ‘Under Secretary, Ministry of Housing and Urban Affairs, Government of India’ after the approval of the Competent Authority.

A mere reading of OM dated January 09, 2019 reflects that it was issued only with the approval of DG, CPWD and not with approval of the Central Government, declaring the petitioner Association as an unrecognized Service Association. The aforesaid OM could not have been issued by DG, CPWD without the approval of the Competent Authority i.e. the Central Government, Ministry of Housing and Urban Affairs in view of definition in Rule 2(a) of CCS (RSA) Rules, 1993.

In view of above, the OM dated January 09, 2019 referred to above, treating the petitioner Association as unrecognized Service Association, without obtaining the approval of the Competent Authority i.e. Central Government, is liable to be set aside to aforesaid extent.

24. It further needs to be determined if for want of continuation of recognition, the petitioner Association loses the status as well as the privileges and protection available to the Association and the office bearers, during the relevant period from 2009 to 2021.

25. **The primary objective of the CCS (RSA) Rules, 1993 is of granting recognition to any Service Association in order to encourage legitimate union activities for enabling the negotiations by the representative body, if so required and maintenance of harmonious relationship between the government and employees. The government servants cannot be excluded from the protection of the rights guaranteed by part III of the Constitution though the duties which they may discharge as a public servant might involve restrictions of freedom in terms of Article 19 of the Constitution of India. By virtue of Article**

19(1)(c) of the Constitution of India, the right to form Association or Union or Cooperative Societies is a fundamental right even though the recognition of such Associations by the government may not be a fundamental right.

26. The claim of petitioners is based upon the fact that the petitioner Association was entitled to continuation of recognition in accordance with CCS (RSA) Rules, 1993 but the same has been intentionally delayed by the respondents. The rights and privileges of the petitioner Association and office bearers could not be left in limbo pending the request for continuation of recognition. It needs to be appreciated that the steps were taken on behalf of the petitioner Association for continuation of recognition vide various communications though after a delay of about one year and eight months. However, thereafter the matter was expected to be dealt expeditiously by the respondents. The right of continuation of a recognized Association should not have been delayed for such a considerably long period thereby denying the office bearers as well as the Association of the privileges. In such an eventuality, the very object of forming an Association of the employees stands patently denied and becomes illusory, from the perspective of the employees despite existence of CCS (RSA) Rules, 1993. The respondents were expected to adhere and take expeditious decision regarding the continuation of recognition of petitioner Association by the Competent Authority.

We have already set aside OM dated January 09, 2019 to the extent of treating the petitioner Association as ‘unrecognized’, as the decision was not

issued with the approval of the Competent Authority as provided under the CCS (RSA) Rules, 1993 but was only taken at the level of DG, CPWD.

This court has ample power under Article 226 of the Constitution of India in appropriate cases to compel the performance of the obligation by the respondents for compliance of grant/continuation of recognition under CCS (RSA) Rules, 1993. The recognition finally appears to have been granted to the petitioner Association in 2021 for a period of five years from the date of issue of the letter but the decision for the period 2009 to 2021 still needs to be reconsidered by the Competent Authority in accordance with law, in view of setting aside of OM dated January 09, 2019 to aforesaid extent. We accordingly deem it appropriate to direct the Competent Authority/respondents to take an appropriate decision in respect of the continuation of recognition in respect of petitioner Association from 2009 till 2021, in accordance with law.

In the light of aforesaid observations, the consequential proceedings taken by respondents for transfer of petitioner No.2&3 be kept in abeyance, considering the objective of CCS (RSA) Rules, 1993 and the attendant circumstances.

27. For the foregoing reasons, we set aside the findings of the Tribunal whereby the prayer to quash the office memorandum dated January 09, 2019 qua the petitioner Association was declined. The prayer regarding the recognition of petitioner Association already stands disposed of by the Tribunal by directing to expedite the re-verification and recognition and thereafter the petitioner Association has since been granted recognition vide

letter No.04/05/2019-EC-III/EW1 for a period of five years w.e.f. issue of letter dated January 18, 2021. The issue regarding the continuation of recognition of petitioner Association for the period 2009-2021 is remanded to the Competent Authority for consideration in accordance with law. Consequently, the transfer orders dated January 11, 2019 and consequential proceedings thereupon taken against petitioner No.2&3 shall be kept in abeyance till decision is taken by the Competent Authority for continuation of recognition of petitioner Association for the period 2009 to 2021.

The writ petition is accordingly disposed of. No order as to costs. Pending application(s), if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MAY 25, 2023/A/sd