

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.612/2002

New Delhi this the 17th day of September, 2002.

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Hony Nb Sub (Retd) R.S. Yadav,
S/o Late Mulayam Singh Yadav,
R/o H.No.654, Sector 37,
Noida.

-Applicant

(By Advocate Shri S.D. Kathuria)

-Versus-

1. Union of India through
the Secretary,
Ministry of Defence,
Sena Bhawan,
New Delhi.

2. General Officer Commanding,
Headquarters Delhi Area,
Delhi Cantt.

-Respondents

(By Advocate Shri B.K. Berera)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):-

Through this OA applicant impugns respondents termination orders dated 7.7.2000, 2.6.2001 as well as order dated 7.3.2001, communicating reasons for termination and has sought quashing of the same as well as direction to allow him to join duties and to continue till 31.1.2002 with all consequential benefits.

2. Applicant retired from Indian Army on 28.2.86 and was appointed as an Accountant in RAM-CSD-Canteen, Noida on 7.11.88. He was given raise in the salary from time to time. Aforesaid canteen was taken over by the General Officer Commanding on 1.8.99.

3. By an order dated 7/2000 respondents have decided to terminate the services of the applicant by giving him 30 days notice. He was not allowed to join

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service after 8.8.2000. He preferred a representation and in response he was asked to collect his salary for the aforesaid period.

4. By letter dated 7.3.2001 respondents communicated reasons stating that the applicant lacked discipline, disloyal and crossed the age of superannuation, i.e., 60 years and on account of failing health.

5. Applicant approached this court in OA-527/2001, whereby by an order dated 1.6.2001 whereby by an order dated 7.3.2001 respondents were restrained from implementing notice dated 7.7.2000. In pursuance thereof respondents vide letter dated 23.4.2001 directed the applicant to perform his duties.

6. In the interregnum as an aftermath of the decision of the Apex Court in Civil Appeal No.1039-40/99 decided on 4.4.2001 in Union of India v. Mohd. Aslam pertaining to the employees of unit run canteens directed the respondents to frame separate conditions of service of their employees. Accordingly by letter dated 14.9.2001 in compliance thereof terms and conditions have been framed for unit run canteen employees which came into effect on 1.6.2001.

7. By an order dated 1.6.2001 the interim order passed on 7.3.2001 was vacated by the Tribunal and the OA was withdrawn by the applicant on 29.1.2002 with liberty to proceed the matter in accordance with law.

8. Respondents by an order dated 2.6.2001 terminated the services of the applicant, giving rise to the present OA.

9. Learned counsel of the applicant Sh. S.D. Kathuria assailed the impugned orders on the ground that he has been deprived of a reasonable opportunity to show cause before termination, which is violative of Article 311 of the Constitution of India and repugnant to principles of natural justice. It is further stated that the orders passed are not reasoned orders.

10. It is stated that the termination is excessive as the applicant has been terminated only for an isolated incident of coming late to office.

11. Sh. Kathuria stated that the terms and conditions as framed by the respondents in pursuance of M. Aslam's case (supra) cannot be applied to his case as the same have been framed through letter dated 14.9.2001 but have been applied retrospectively w.e.f. 1.6.2001.

12. Sh. Kathuria lastly submitted that though the employees of the same age group who have attained the age of more than 60 years are still retained and would be and are being terminated in phases, the discrimination meted out to the applicant being at par with them cannot be countenanced in view of the provisions of Articles 14 and 16 of the Constitution of India.

13. On the other hand, Sh. B.K. Berera, learned counsel appearing for the respondents controverted the contentions and stated that as the terms and conditions had come into effect w.e.f. 1.6.2001 the applicant's services have been terminated in accordance with the terms and conditions where paragraph 51 stipulates that an employee is to be superannuated on attaining the age of 58 years and even on extension which is at the discretion of the appointing authority upto the maximum age of 60 years. As the applicant has already attained the aged of 60 years on 28.2.99 he has no right to be continued further as per the terms and conditions which are framed in pursuance of the directions of the Apex Court. He has further stated that the services have been terminated due to ill health of the applicant as well and similarly circumstance employees are being terminated in phases who have already attained the age of 60 years. As the applicant has already attained the age of superannuation earlier than his services were terminated there is no question of any discrimination meted out to him. It is also stated that the performance of the applicant was also not upto the mark as he was warned number of times verbally for coming late during working ours.

14. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view on account of stay accorded by the Tribunal applicant was taken back on duty in April, 2001 but as soon as the stay was vacated and co-incidentally the terms and conditions had come into effect with effect from the same date the same were resorted to where it is stipulated that nobody can be

continued beyond the maximum age of 60 years. As admittedly the applicant has crossed the age of superannuation on 28.2.99 he cannot claim his continuance beyond the age of superannuation as a matter of right. He is bound by the terms and conditions, which he has not challenged being framed in compliance of the directions of the Apex Court in Aslam's case (supra).

15. In so far as the contention of not resorting to the provisions of Article 311 of the Constitution of India and observing the principles of natural justice is concerned, applicant being over aged beyond the age of superannuation has no right to be continued and the termination has not been resorted to as a punitive measure and is not founded on misconduct of the applicant.

16. In so far as the contention that he has been discriminated and others who were over-aged are still continuing the same would not amount to any hostile discrimination being violative of Articles 14 and 16 of the Constitution of India, as these employees as per the terms and conditions framed by the respondents are being terminated in a phased manner under paragraph 51 of the conditions of service *ibid*. As the applicant has already attained the age of 58 years and has also crossed the age of 60 years which is the maximum age for superannuation he cannot claim continuance as a matter of right.

17. In the result the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

S.A.T. Rizvi
(S.A.T. Rizvi)
Member (A)