

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

✓ OA 2069/2002 and OA 2074/2002

New Delhi, this the 2nd day of May, 2003

Hon'ble Sh. Shanker Raju, Member (J)

OA 2069/2002

Hav. Kewal Singh  
S/o Sh. Hazara Ram  
presently residing at  
C/o Rajesh Tiwari  
D-653, Kidwai Nagar  
New Delhi.

OA 2074/2002

Hav. N.D. Sehgal  
S/o Sh. Bhagat Ram  
presently residing at  
C/o Rajesh Tiwari  
D-653, Kidwai Nagar  
New Delhi.

(By Advocate Sh. S.K. Gupta)

...Applicants

V E R S U S

Union of India through

1. Secretary  
Ministry of Defence  
South Block  
New Delhi.
2. Quarter Master General  
Army Headquarters  
Sena Bhawan  
New Delhi.
3. General Officer Commanding  
HQ-11 Corps  
C/O 56 APO
4. Patron Vajra Station Canteen  
HQ-350 INF Brigade  
C/o 56 APO
5. O.I.C.  
Canteen  
Patron Vajra Station Canteen  
HQ-350 INF Brigade  
C/o 56 APO
6. Manager  
Vajra Station Canteen  
Chandigarh Road, Nawa Shahr  
(Punjab).

...Respondents

(By Advocate Sh. Arun Bhardwaj)

O R D E R

By Shri Shanker Raiu.

As questions of facts and law are identical, these OAs are disposed of by a common order.

2. In OA 2069/2002, applicant impugns respondents orders dated 30-5-2002, 5-7-2002 and 20-7-2002, wherein his services have been terminated and representations made were also rejected. Applicant having served the Indian Army from 2-10-1980 to 30-9-1997, joined the respondents as Watchman w.e.f. 12-6-98. On recontination on 19-4-2002, applicant was appointed afresh on probation for a period of one year w.e.f. 1-6-2001 to the post of Watchman and had accepted the terms and conditions vide letter dated 21-4-2002.

3. In OA 2074/2002, applicant impugns the respondents order dated 30-5-2002, 6-7-2002 as well as 20-7-2002, whereby his services have been terminated and representations made were rejected. Applicant having served the Indian Army w.e.f. 24-10-66 to 31-10-94, joined the respondents as Assistant Accountant w.e.f. 3-3-1998 and was promoted to the post of Accountant w.e.f. 1-10-2000. By a letter dated 19-4-2002, applicant was appointed afresh as Accountant on probation for a period of one year and had accepted the terms and conditions laid down separately.

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4. Before the adjudication of the issues involved, necessary brief particulars leading to filing of these OAs are enumerated as under.

5. Apex Court in UOI & Ors. Vs. Mohd. Aslam (JT 2001 (1) SC 278) while dealing with the jurisdiction of Central Administrative Tribunal to the employees of Unit Run Canteens of the CSD of Ministry of Defence, held in all intent and purposes these employees as Govt. employees, having jurisdiction before the C.A.T. to file applications regarding their grievances. However, it would further observed that being Govt. servants, Unit Run Canteens employees would by itself ipso facto could not be entitled to get all service benefits as available to counter parts in serving in CSD Canteens or available to regular Govt. servants. Accordingly directions have been issued to determine the service conditions of the employees.

6. Accordingly service conditions have been framed by a letter dated 14-9-2001 which was effective from 1-6-2001. Inter alia, one of the condition was to furnish fidelity bond. Accordingly the petitioners in Mohd. Aslam's case (supra) filed Contempt Petitions No. 243-247/2001 before the Apex Court challenging the *Unconscionable* terms and conditions framed by the Ministry of Defence. Apex Court by an order passed on 29-8-2002, observed the aforesaid guidelines issued on 14-9-2001 being violative of the directions of the Court. Accordingly directions have been issued to the Secretary, Ministry of Defence to examine the so called guidelines and to satisfy as to

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being in conformity with the directions contained in CA No. 1039-40/99 decided by the Apex Court on 4-1-2001. However, liberty was given to the respondents, in the event, the guidelines are not in conformity, to prepare new set of Rules governing the conditions.

7. On 1-11-2002, when the Contempt Petitions were fixed for hearing, noting the fact that new guidelines have not been issued, further time of four weeks was granted to the respondents to frame the guidelines. Accordingly, new guidelines came into being effective from 4-1-2001. Matter is still pending before the Apex Court and the legality of terms and conditions framed by the respondents is yet to be ascertained and tested.

8. Earlier as the guidelines framed on 14-9-2001 have been found not in conformity with the directions of the Apex Court. Learned A.S.G. while appearing for the respondents before the Apex Court on 29-10-2001 made a statement that termination ordered in respect of employees under the terms and conditions have already been recalled and by an order dated 17-9-2002 issued by the respondents, where a request has been made not to terminate the services of any Unit Run Canteen employees based on terms and conditions dated 14-9-2001.

9. Applicant who were appointed on probation have been undisputedly, in so far as, their terms and conditions are concerned, are governed by the terms and conditions issued on 14-9-2001.

10. Learned counsel for the applicant by referring to decision of a DB in OA 1530/2002 in S.Sinha & Ors. Vs. UOI decided on 24-2-2003, contended that in identical situation, where the services of Unit Run Canteen employees were terminated resorting to terms and conditions dated 14-9-2001, orders have been set aside. In all four the case of the applicant is covered by the aforesaid ratio. However, on merit it is contended that though the applicants were working with the respondents and have been given a fresh appointment and their services are dispensed with by a punitive order founded on mis-conduct without following Article 311 (2) of the Constitution of India.

11. On the other hand, learned counsel of the respondents Sh. Arun Bhardwaj, vehemently opposed the contentions but does not dispute the statement made by the A.S.G. before the Apex Court on 29-10-2001 and their letter issued on 17-9-2002. However, it is further contended that the applicants have accepted the new terms and conditions promulgated vide letter dated 14-9-2001 which was effective from 1-6-2001 and as they had been appointed on probation, on completion of the same, their services have been terminated. As they had not been found fit and their performance was unsatisfactory, as such the order is simplicitor, not founded on misconduct and non-stigmatic.

12. Applicant's counsel Sh. S.K.Gupta reiterated his pleas taken in OAs.

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13. I have carefully considered the rival contentions of the parties and perused the material on record.

14. Without going into the merits of this case, as the respondents have resorted to termination of the services of the applicants under the terms and conditions framed on 14-9-2001, the same is not sustainable. After being declared Govt. servants, Unitrun Canteens employees are to be governed by the terms and conditions framed by the respondents, for which, six months' time was allowed by the Apex Court. However, when the terms and conditions was found uncon<sup>l</sup>reasonable, on filing Contempt Petition, Apex Court observed the same in violation of the Court's directions, as such new conditions are being framed and under the scrutiny of the Apex Court in CP. However, as all other employees who had been terminated under the terms and conditions of 14-9-2001, on the statement of learned A.S.G. made before the Apex Court their termination orders have been recalled and further more, by an order dated 17-9-2002, it has been requested not to resort to termination. This is not disputed and is apparent from the order passed by this Court in S.Sinha's case (supra).

15. As the services of the applicants have been terminated under the terms and conditions framed by the respondents on 14-9-2001, which are found to be in violation of the decision of the Apex Court, the same could not have been resorted to dispense with the services of the applicants. On this count alone, the

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orders passed by the respondents terminating their services are not sustainable.

16. In the result for the forgoing reasons, without going into the other merits of the case, both the OAs are partly allowed. Impugned orders of termination in OA 2069/2002 and OA 2074/2002 are quashed and set aside. Respondents are directed to forthwith reinstate the applicants. However, this shall not preclude the respondents from taking appropriate action against the applicants subject to outcome of the C.P. before the Apex Court and the terms and conditions so approved. In so far as consequential benefits are concerned, the same shall also remain subject to the outcome of the action to be taken by the respondents. No costs.

17. Copy of this order be kept in both the files.

*S. Raju*  
(SHANKER RAJU)  
MEMBER (J)

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