

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1530/2002

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New Delhi this the 24th day of February, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. S. Sinha
2. A.G. Das
3. Bhupender Singh
4. Pankaj Jain
5. Raka Jain
6. Miss Anju Gill
7. Reema Rani

-Applicants

(As per memo of parties)

(By Advocate Shri S.K. Gupta with Sh. Arvind Kumar
Shukla, Sh. M. Rashid Saheed and Md. Shaheed Anwar)

-Versus-

1. Union of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Quarter Master General,
Army Headquarters,
Sena Bhawan, Dalhauzi Road,
New Delhi.
3. Deputy General Officer Commanding,
Chairman Pine Canteen,
Headquarter, 9 Infantry Division,
C/o 56 APO.
4. Maj. General, R.K. Singh,
GOC HQ 9 Inf. DIL,
C/o 50 APO.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicants, seven in number, have assailed termination orders collectively at Annexure A-1 whereby their services have been dispensed with and they are terminated for non-submission of acceptance in the form of non-Judicial Stamp Paper of Rs.50/- of the terms and conditions of service. They have sought re-instatement with all consequential benefits.

2. Applicants are working in different

capacities, for example, Accountant, Ledger Clerk, Salesman-cum-Store Keeper etc. in Pine Canteen at Meerut where they have been recruited long back.

3. In view of the decision of the Apex Court in Union of India v. M. Aslam, JT 2001 (1) SC 278 employees of Unit Run Canteen have been treated as government employees with further direction to Government to frame their conditions of service, within a period of six months.

4. As the service conditions have not been framed within the stipulated period of six months, on a contempt petition filed before the Apex Court respondents filed their reply and framed the terms and conditions and regulations.

5. During the pendency of this contempt petition services of some of the employees have been terminated and by an order dated 29.10.2001 in CA-1039-1040/99 the Apex Court as per the statement of learned ASG that the policy framed has taken care of full implementation of the direction given by the court and in cases where prior to policy and subsequent to the orders of the court some of the employees stood terminated orders have been recalled and all have been treated in accordance with the policy except those who have attained superannuation. Respondents through their letter dated 14.3.2002 in furtherance of the implementation of direction in M. Aslam's case (supra) sought acceptance of terms and conditions (supra) wherein it was one of the conditions to furnish a certificate of acceptance of terms and conditions on a non-judicial stamp paper of Rs.50/-. As the terms and conditions were

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unconscionable the same have not been accepted by applicants. Accordingly, this resulted in issuance of termination orders whereby their services have been dispensed with on payment of one month's salary in lieu of notice which was accepted under protest by respondents, giving rise to the present OA.

6. On 5.6.2002 this court taking note of the fact that terms and conditions laid down by letter dated 14.9.2001 made effective from 1.6.2001 do not stipulate requirement of submission of acceptance on non-judicial stamp paper of Rs.50/- and whereas no bond is to be made applicable as per the counter-affidavit filed before the Apex Court by the respondents on 29.9.2001 this court stayed the operation of the termination. Subsequently, after hearing the parties by an order dated 13.8.2002 notices have been issued by this court on MA-1737/2002 filed by the respondents for vacation of the interim orders and after hearing parties by an order dated 6.9.2002 finding that no such commitment of not furnishing the bond or conditions of service on a non-judicial stamp paper this court vacated the interim order and further ordered listing of the OA after the decision of the Apex Court in contempt petition (supra).

7. MA-2885/2002 filed by applicants for taking additional documents on record, which includes an order passed by the respondents on 17.9.2002 whereby directions have been issued not to terminate the services of Unit Run Canteen Employees (URC) based on any clause in the existing terms as well as the additional affidavit filed by respondents before the Apex Court enclosing the terms and

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conditions which are effective from 4.1.2001, contending that as the terms and conditions have been finalised claim of applicants is to be allowed.

8. Applicants against the order passed by this court on 6.9.2002 keeping the OA in abeyance filed MA-255/03 seeking revival of the orders passed by the Tribunal on the ground that the matter had come up before the Apex Court on 29.8.2002 in contempt the guidelines framed by the respondents determining the service conditions of URC employees was not found to be set of rules framed by the Government, Ministry of Defence, determining the service conditions, which prima facie found violative of court's directions, which led to issuance of a letter dated 17.9.2002 by the respondents which has an effect of withdrawing the conditions promulgated by covering letter dated 13.9.2001 and further resorted to an order passed by the Apex Court on 1.11.2002, wherein rules are made effective from 4.1.2002, which clearly shows that the terms and conditions of 14.9.2002 have been superseded by the latest rules and the terms laid down vide letter dated 6.10.2002 no longer survive.

9. Learned counsel for applicants contended that in the pleadings before the Apex Court in contempt respondents have filed office memorandum which, inter alia, contained at clause 3 a stipulation that revised agreement is not required to be signed nor a bond has been made applicable and all the canteen employees are still continuing to be in service. As such having regard to their undertaking respondents are not legally permitted to enforce the terms of agreement.

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10. In this view of the matter it is contended that having regard to their own revised conditions of service as produced before the Apex Court and the statement of learned ASG on 29.10.2001 whereby all termination orders have been recalled and their subsequent letter issued on 17.9.2002 whereby in compliance of the order passed by the Apex Court on 29.8.2002 a request has been made not to terminate the services of any URC employee based on existing terms and conditions dated 14.9.2001 and 10.12.2001. In this view of the matter it is stated that once the service of URC employees without insisting upon terms and conditions contained in the aforesaid letter has not been terminated and few of them have been recalled meeting out a differential treatment to applicants on the basis that they refused to exercise the acceptance is violative of Articles 14 and 16 of the Constitution of India. Moreover, it is stated that terms and conditions as framed by the respondents though revised subsequently are still sub-judiced before the Apex Court and by an order dated 1.11.2002 four weeks' time has been granted to comply with the directions. As such the conditions are not yet finalised and approved by the Apex Court.

11. On the other hand, respondents' counsel Sh. A.K. Bhardwaj vehemently opposed the contentions of applicants and stated that applicants had misled the court as nowhere in the contempt petition before the Apex Court any statement as regards the bond has been made. Moreover, it is contended that as the terms and conditions are still to be finalised and as applicants have failed to exercise their right and have not accepted the terms and conditions

as per the conditions of service their services have been rightly dispensed with. Moreover, statement made by learned ASG before the Apex Court was only a brief regarding statement of ASG and the reference was made to those persons whose services were terminated prior to the policy but do not include the termination of those who refused to accept the conditions of service offered to them. He vehemently denied that the terms and conditions of service have been finalised by stating that the same are sub-judiced before the Apex Court in a contempt petition.

12. We have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that on account of condition of bond applicants have not accepted the conditions of service which resulted in termination of their service. As these conditions have not been found as per the directions contained in M. Aslam's case (supra) the Apex adjourned the contempt petition from time to time and on one occasion on 29.10.2001 regarding statement of ASG that the services of those terminated as per the terms and conditions order shall be recalled and the fact that by a letter dated 17.9.2002 a policy decision has been taken not to terminate the services on the basis of any terms and conditions as framed by the respondents and sub-judiced before the Apex Court and are still under consideration for its validity and relevance to the directions issued in M.A. Aslam's case (supra) termination of services of applicants on the ground of their refusal to accept the terms and conditions is certainly violative of Articles 14 and 16 ^{of the Constitution of India} and the act discriminatory.

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13. In the result, for the foregoing reasons, termination orders are not legally sustainable and are accordingly quashed and set aside. However, the question regarding acceptance of terms and conditions and applicants' entitlement to consequential benefits shall be subject to the final outcome in contempt petition sub-judice^{le} before the Apex Court as well as to the terms and conditions to be finally approved by the Apex Court.

14. With these observations the OA is disposed of. No costs.

S. Raju

(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)