

Central Adminisrative Tribunal
Principal Bench

O.A.No.3364/2001

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 26th day of February, 2003

1. Jai Singh
s/o Sh. Joga Singh
Ex. Head Baker PSI Bakery.

2. Ram Barose
s/o Sh. Kali Ram
Ex. Baker, PSI Bakery.

3. Amar Singh
s/o Sh. Shiv Singh
Ex. Baker, PSI Bakery.

All presently residing at:
A-249, Rama Garden, Karawal Garden
Delhi - 110 094. ... Applicants
(By Advocate: Sh. Arun Bhardwaj)

Vs.

1. Union of India
through its Secretary
Ministry of Home Affairs
Central Sectt.
New Delhi.

2. The Air Force Commanding
Air Force Station
Race Course
New Delhi - 110 003.

3. The Administrative Officer
Sqn Leader,
Race Course Old Camp
Air Force Station
New Delhi - 110 003.

4. Group Captain (CADD)
Race Course, Old Camp
Air Force Station
New Delhi - 110 003. ... Respondents
(By Advocate: Sh. Rajeev Bansal)

O R D E R

By Shri Shanker Raju, M(J):

Applicants, three in number, have sought reinstatement w.e.f. 18.7.1997 with all consequential benefits and a direction to provide them Government accommodation, direction to pay the arrears of differences in pay and for a further direction to regularise them with all consequential benefits.

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2. Applicants No.1, 2 and 3 had been working from the years 1989, 1991 and 1990 respectfully as Helper except Applicant No.1 who was appointed as Supervisor in the unit of ESI Bakery in Air Force Station OWC Camp Race Course, New Delhi. They were issued identity passes and were paid consolidated salary. Being aggrieved with verbal termination w.e.f. 18.7.1997 and vacation from accommodation provided by respondents filed a Suit before Civil Judge which was rejected on 15.1.1998.

3. Applicants have filed OA 533/98 which was dismissed on 25.5.2000 on the ground of jurisdiction as the applicants had not been found to be holders of civil posts under the Union of India.

4. In the light of the decision of Apex Court in Union of India & Others v. M. Aslam & Others, 2000(1) Scale 48 where employees working in Unit Run Canteens have been directed to be treated as Government employees, CWP No.2423/2001 filed by applicants against the order of the Tribunal was disposed of on 21.9.2001 with liberty to applicants to file a fresh OA to enable the petitioners take up the plea in the light of the Supreme Court's Judgment, giving rise to the present OA.

5. Shri Arun Bhardwaj, learned counsel appearing on behalf of applicants, contended that having regard to the fact that Unit Run Canteen employees have been treated as Government servants on the same analogy when the applicants have been paid

their salary from the Consolidated Fund of India, for which the salary bills are signed by the officers of the Air Force and increment was also been granted to the applicants and they have been provided accommodation, they are holders of civil posts in the Union of India and are treated to be a Government servants, as such it is stated that this Tribunal has jurisdiction to adjudicate their grievance.

6. Moreover, it is stated that applicants had been working for about nine years with the respondents, and before dispensing with their services, which is founded on their alleged misconduct of mixing of ammonia with sugar and caused the deliberate loss to the bakery, without compliance of Article 311, rather violative of Articles 14 and 16 of the Constitution of India.

7. Sh. Arun Bhardwaj, learned counsel further stated that applicants are entitled to be paid regular scale and also seek regularisation after rendering services with the respondents. Lastly, it is contended that the burden of proof to show that the applicants have been paid out of the Contingent Fund/Consolidated Fund of India is upon the respondents as they are in possession of the relevant documents, but referring to various payments, bills, etc., it is contended that there exist master and servant relationship between applicants and respondents, which allows the Tribunal to adjudicate their grievance being civil servants.

8. On the other hand, Shri Rajeev Bansal, learned counsel appearing on behalf of respondents

strongly rebutted the contentions and took a preliminary objection by stating that although liberty was accorded to applicants by High Court of Delhi, but as applicants have not taken such plea on the basis of M. Aslam's case, the OA is barred by resjudicata. (22)

9. Moreover, it is stated that the aforesaid Bakery was started in 1988 and it is purely a non profit making welfare venture to provide few bakery products available to the troops at reasonable prices and this Bakery comes under non-public fund and is not funded by the Canteen Stores Department and rather funds are arranged by subscription by Officers and Jawans from the sale proceedings of different projects. Accordingly, the applicants are not comparable with CSD employees and M. Aslam's case (supra) would not be applicable. Accordingly, this Court has no jurisdiction to take cognizance of their grievance as they are not holders of civil posts. He placed reliance on general instructions, Non Public Fund organisations, where Canteens are also one of the Non Public Fund units.

10. Moreover, by referring to letter dated 13.11.1999, it is stated that there are separate terms and conditions of service and accordingly their termination was resorted as per the directions on unsatisfactory performance and as the same is not founded on in any misconduct and without stigma, the order of termination is assailed.

11. I have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in Union of India v. M. Aslam (supra) where the following observations which lead to declaration of employees of Unit-Run Canteen as Government employees amenable to the jurisdiction of this Tribunal:

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"Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government servants, when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr. Goswami, the learned senior counsel appearing for the Union of India strongly relied upon the judgement of this Court in Union of India and another vs. Chotelal & Others - (1999) 1 SCC 554, wherein the question for consideration was whether Dhobis appointed to wash the clothes of cadets at NDA at Khadakwasla who are being paid from the regimental fund could be treated as holders of civil post within the Ministry of Defence. This Court answered in the negative because the regimental fund was held not to be a public fund as defined in paragraph 802 of Defence Services Regulation. Payment to such dhobis out of the regimental fund and the character of that regimental fund was in the determinative factor. But in the case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit-Run Canteen then the employees who discharge the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the Defence Services have all pervasive control over the Unit-Run Canteens as well as the employees serving therein. Regular set of Rules have been framed determining the service conditions of the employees in Unit-Run Canteens. The funding of articles are provided by Canteen Stores Department which itself is

a part of the Ministry of Defence. The report of a Committee of Subordinate Legislation went into detail the working conditions of the employees engaged in the Unit-Run Canteens and categorically came to the conclusion that these employees are recruited, controlled and supervised by the Rules and Regulations made by the Defence Services although these have been given the name of Executive Instructions. The said Committee came to the conclusion that for all intent and purposes the employees in the Unit-Run Canteens are Government employees and should be treated as such. In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-Run Canteens must be held to be that of a government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions of Administrative Tribunal Act. Civil Appeal Nos.1039-1040 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Branch in O.A.No.86 of 1995 accordingly stand dismissed."

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12. If one has regard to the aforesaid ratio, employees in the Non Public Fund can be declared as Government employees if it is to be established that the funding of articles in Bakery, as in the present case, are provided by the Canteen Stores Department, which forms a part of the Ministry of Defence and its fund ~~form~~^{is} part of the Consolidated Fund of India. However, in the present case, from the pleadings, as it is found that the funds out of which the applicants have been paid are basically Non Public Fund which was accumulated from the subscriptions from the Officers and Jawans, and from the sale proceedings of different projects, and the fact that Bakery is not funded by the Canteen Stores Department, on the same analogy of the Unit-Run Canteen employees in M. Aslam's case, applicants cannot be treated as Government employees as applicants are not covered by the ratio laid down in M. Aslam's case (supra). As the High Court has

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accorded liberty to the applicants with a right to raise the plea in consonance with M. Aslam's case, having failed to bring their case within the ambit of decision in M. Aslam's case and the fact that Bakery, where the applicants are employed, is not funded by CSD, the applicants cannot be treated as holder of civil posts/Government servant to be amenable to the jurisdiction of this Court.

(23)

13. In the result, for the foregoing reasons, applicants, who are not holder of civil posts, cannot be treated as Government servants, no right to agitate their grievance before this Tribunal. Accordingly, OA is dismissed ⁱⁿ for lack of jurisdiction. However, this will not preclude them from raising their grievance in accordance with law before the appropriate forum. No costs.

S. Raju
(Shanker Raju)
Member(J)

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