

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.888/99

New Delhi, this the 18th day of October, 2001

Raja Ram  
s/o Sh. Chander Bhushan  
C-1/105A, Madhu Vihar  
Uttam Nagar  
New Delhi - 50. .. Applicant

(By Advocate: Shri Yogesh Sharma)

Vs.

1. Union of India through  
The Secretary  
Ministry of Defence  
South Block  
New Delhi.
2. I.N.S.India,  
Chanakyapuri  
New Delhi through  
The Commander/Supply Officer  
Naval Provost Marshal  
Delhi Area. .. Respondents

(By Advocate: None)

O R D E R(Oral)

By Shanker Raju, Member (J):

None appears for the respondents even on second call. The present OA is disposed of at the admission stage under the provisions of Rule 16 of the CAT (Procedure) Rules, 1987.

2. Briefly stated the applicant who had been sponsored through Employment Exchange and on the basis of the interview conducted by the respondents, the applicant was engaged as Casual Labour on 1.5.1985 and continued to perform his duty till 30.6.1999 when he has been disengaged by the respondents. The applicant has preferred OA No.2163/92 earlier and junior persons of the applicant have been accorded temporary status and by an order dated 17.3.1998, this Court has

- 2 -

dismissed the aforesaid OA on the ground of jurisdiction by holding that the funds from which, i.e., regimental fund, the applicant has been paid was a non-public fund and as the applicant does not hold the civil post, he is not amenable to the jurisdiction of this Court. The applicant carried this OA before the High Court and by an order dated 12.10.1999 in CWP No.3272/98 on the basis of discovery of certain documents by the applicant, to indicate that he is a holder of civil post and has been paid out of the public funds by the respondents, the applicant was given liberty to reagitate the matter before the CAT, the applicant filed the present OA though working with the respondents till 30.6.1999, when the services of the applicant has been disengaged by the respondents. In this OA the applicant has prayed for consideration for accord of temporary status and regularisation as per the Scheme of DoPT of 1993.

3. As regards the jurisdiction of this Court placing reliance on the Manual of Naval Orientation, Section 1, clause 916, it is stated that Welfare Schemes have been evolved for financial assistance which includes a benevolent fund. It is also stated that welfare funds which interalia includes the Welfare Amenities Grant and all other Welfare Funds. As the same has been observed to be a Public Fund which provides money for the creation and other welfare activities. Placing reliance on OM dated 12.6.1991, Annexure A-4, it is stated that Amenities Fund which is a Public Fund has been used to employ labourers on casual basis and if the payment is done through this Amenities Fund, it is a Public Fund the applicant is a

39

holder of civil post and having relationship of master and servant with the respondents this Court has jurisdiction to entertain this case. The applicant further places reliance on a ratio of Apex Court in UOI & Others Vs. M. Aslam and Others, JT 2001 (1) SC 278 wherein the employees working in Unit-Run Canteens have approached this Court and a contrary view has taken in Chotelal's case supra the Apex Court held that Union Canteen and the incumbents employed therein are funded from public funds and are to be treated as Government servants. In this back ground, it is stated that as the applicant is also been paid from the public fund having provided in the letter of respondents, he is to be treated as Government servant and amenable to the Scheme of DoPT of 1993 which has application on civilian employees in defence department. Further, learned counsel for the applicant states that the junior persons of the applicant have been regularised and has stated that names of 12 such casual labourers who were similarly and identical situated and paid from the same fund have been accorded regularisation, this according to the applicant is a hostile discrimination in violation of Articles 14 and 16 of the Constitution of India. Further placing reliance on an order passed by this Court in OA 929/92 dated 25.2.1997 in Ram Dhuj & Others Vs. UOI & Others, Casual Labourers employees in the office of IMS have on the basis of compromise between the respondents withdrew the OA and were subsequently regularised. As such, it is stated that the respondents are estopped from taking a contrary stand in this OA regarding jurisdiction.

40

4. Though, despite an opportunity to rebut the contentions of the applicant in this OA, the learned counsel for the respondents has filed a reply taking plea of jurisdiction the contention of the applicant on merits have not at all been rebutted or controverted by the respondents. In their reply, it is stated that the applicant who has been paid from Public Fund, i.e., Regimental Funds and placing reliance on the case of Union of India Vs. Chotela, JT 1998 (8) SC 497, contended that the amenities fund as contended by the applicant is non-public fund and as the applicant was being paid from maintenance fund which does not include in amenities fund as such the applicant having not been paid from the public fund cannot be treated as Government servant and there is no relation ship of master and servant and as such cannot claim any regularisation which is admissible only to a Government srvant. It is also stated that amenities fund has nothing to do with the Government exchequer. It is lastly contended that the applicant had himself abstaining from the job and has not been discharged by them.

41

5. In the rejoinder, the applicnat has reiterated the pleas taken by him in the OA.

6. I have considered the rival <sup>he</sup>cont<sup>e</sup>ntions of the learned counsel for the applicant and perused the pleadings on record. Having approached this Court and on the basis that the fund out of which the applicant is paid is a non-public fund, the Tribunal rejected the plea of the applicant and dismissed the OA on jurisdiction. The applicant by way of producing the

he

documents in CWP before the High Court which clearly demonstrate that the welfare amenities/grants out of which the labourers are being paid is a public fund, the matter has been remanded with liberty to reargue the issue before the CAT. From the perusal of the letter dated 12.6.1991 and clause 916 of Naval Orientation (Section-I) Manual shows that welfare amenities fund is observed to be a public fund and the fact that the only evidence to show that the labourers have been paid out of those funds i.e., amenities fund, the stand of the respondents which is not consistent earlier in the OA, where the fund was described as a regimental fund now the same has been referred to as maintenance fund and in the absence of any evidence to the effect that the applicant has been paid from the maintenance fund which is not a part of amenities fund and there reliance on a memo dated 26.6.1997 is not well founded. Apart from it, what I find from the record that the applicant who has been employed as casual labourer with the respondents had worked from 1985 to 1999 and had been performing the duties as assigned by the respondents and were being paid from the amenities fund, which has been created for the welfare of the respondents, the charter shown by the respondents only establishes that the amenities fund is arranged from different sources would be of no help to them. The fact remains that the applicant has been paid from the amenities fund which has been decided to be treated as public fund and the fact that similar circumstances applicants having approached this Court for regularisation have been regularised which indicate that in the past, right from 1985 to 1997, the amenities fund out of which the

42

he

applicant has been paid is treated to be a public fund. The applicant cannot be deprived of his right to be considered for temporary status and regularisation on filmy grounds. The objection of the respondents regarding jurisdiction cannot be countenanced. In view of the decision of the Apex Court in M.Asiam's case supra where the decision of Chotelal has been distinguished and it has been held that the private canteen facilities to defence service personal is obligatory on the part of the Government and in fact this Unit Run Canteens discharged the duty of retail outlets after getting the provisions from whole scale outlets. In nut-shell the funds are provided by the respondents for running these canteens. In this case also the funds which are incorporated in the amenities fund are provided for the welfare of the respondents and are contributed by the respondents as such the same are to be treated as public fund.

43

7. Having regard to the established position that the applicant is funded from public fund and having master and servant relationship with the respondents, and is a Government servant, he is entitled for consideration of temporary status as well as regularisation in terms of the provisions of the Scheme of DoPT 10.9.1993. Furthermore, having considered the case of the juniors of the applicant and ~~regularised~~<sup>regularised</sup> them in the post the respondents have acted in violation of Articles 14 and 16 of the Constitution of India. In the result as there is no dispute as to the working days and eligibility of the applicant to the accord of temporary status and regularisation and the fact that there has not been

any rebuttal to the contentions of the applicant on merits in the counter reply, the same are deemed to be admitted by the respondents.

44

8. In the result, the present OA is allowed. The respondents are directed to reengage the applicant and to consider him for temporary status and regularisation in accordance with the instructions and the Scheme of DoPT of 1993 with all consequential benefits within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(SHANKER RAJU)  
MEMBER(J)

/RAO/