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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2084/2004

This the 3rd day of October, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. B.P.Bhardwaj S/O Sri Ram Sharma,
Delhi Area Station Canteen,
25th Mall Road,
Delhi Cantt.-10.
2. Anil Kumar S/O Kalu Ram,
INS India, Dalhousie Road,
New Delhi.
3. Mukesh Saxena S/O Rajesh Saxena,
UDC, AF Canteen Race Course,
New Delhi.
4. T.S.Chauhan S/O D.S.Chauhan,
Golden Ram CSD,
Meerut City (UP).

... Applicants

(By Shri N.K.Verma with Shri Ranvir Yadav, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Quarter Master General,
QMG Branch, Army Headquarters,
New Delhi-110001.
3. A.O.C. (Personnel),
Air Headquarters,
New Delhi-110001.
4. Chairman, INCCB, NHQ,
New Delhi-110001.

... Respondents

(By Shri R.N.Singh, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicants are working in Unit Run Canteens (URCs) of different wings of the Armed Forces. They have challenged Annexures A-14 dated 28.4.2003 and

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A-17 dated 15.7.2003 whereby respondents have issued rules regulating the terms and conditions of service of civilian employees of URCs paid out of non-public fund. These rules are purported to have been issued by the Ministry of Defence in compliance of the orders dated 4.1.2001 of the Hon'ble Supreme Court passed in Civil Appeal No.1039-1043 of 1999 [*Union of India & Ors v M. Aslam & Ors.*]. It is alleged that although these employees have been treated as government servants by the Hon'ble Supreme Court, respondents have denied various allowances including DA, HRA, CCA, conveyance allowance, medical facilities, pensionary benefits and promotional avenues, most of which were available to these employees prior to promulgation of these rules. Applicants have sought the following reliefs:

- "a) grant pay, allowances and other facilities to the applicants at the same as granted to the Central Government employees or their counterpart CSD;
- b) direct the respondents to frame statutory rules under Article 309 of the Constitution of India or by any other expert body to determine the full scale of terms and conditions and other benefits to the applicants;
- c) direct the respondents to pay by including the HRA, DA, CCA etc. which form the intrinsic part of the emoluments payable to an employee under the Minimum Wages Act 1948 and also extend all other welfare facilities as is available to the Govt. Servants like Medical Attendance Rules, maternity leave upto 135 days, Children Education Allowance as per the Government of India scales, pension/EPF Pension Scheme 1995 incorporate provisions regarding time bound promotions, etc by amending the terms and Conditions Rules issued on 28.4.2003;
- d) pass such other or further order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case;"

2. Learned counsel of applicants contended that while the Hon'ble Supreme Court has declared the URC employees as holders of civil posts in the Government of India, respondents ought to have granted same terms and conditions to them as applicable to the Government employees of various Ministries and Departments. Applicants should also have been granted allowances

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like DA, HRA, CCA etc., and provided facilities like medical/maternity leave etc. These rules regarding terms and conditions of applicants should also have been issued under proviso to Article 309 of the Constitution of India as is done in the case of other employees of the Government. In the process the Ministry of Defence ought to have consulted the Ministry of Personnel and the Ministry of Finance as is done in the case of employees of other Ministries and Departments. However, respondents have arbitrarily issued the impugned orders contrary to the normal procedure and in violation of the provisions of Article 309 of the Constitution. In the process there is no uniformity even in the rules of different wings of the Armed Forces, though all URC employees in all wings of the Armed Forces perform the same duties and responsibilities.

3. On the other hand, the learned counsel of respondents stated that the Hon'ble Supreme Court has not ruled that the URC employees will be entitled to all service benefits including retirement benefits as the Government servants in other Ministries and Departments. The draft rules were prepared and sent to DOP&T which did not offer any comments thereon. As such, there was no need for vetting of these rules by DOP&T. The Hon'ble Supreme Court in the case of *M.Aslam* (supra) had recognised the status of the employees in the URCs as that of Government employees, which provides jurisdiction to the Central Administrative Tribunal to entertain applications of such employees. However, *ipso facto* it would not entitle these employees to get all service benefits which are available to regular Government servants or even their counterparts serving in the CSD. The Hon'ble Supreme Court directed the Ministry of Defence to determine the service conditions of the employees in the URCs leaving it open to frame separate conditions of service of the employees or to adopt the Fundamental Rules. The guidelines framed for determining the service conditions of the URC employees formed the subject matter of the contempt petitions before the Hon'ble Supreme Court. The Apex Court in its order dated 29.8.2002 disposing of the

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contempt petitions held that *prima facie* the guidelines were in violation of the Court's directions. However, it directed the Secretary in the Ministry of Defence to examine the so-called guidelines and be satisfied whether the said guidelines are in compliance with the directions of the Court. It was kept open for the Secretary that if he comes to the conclusion that the said guidelines were not in conformity with the directions of the Supreme Court, then he may frame a set of rules governing the conditions of service of the employees of these URCs within a period of two months. The learned counsel maintained that the Secretary reconsidered the matter and the terms and conditions were re-framed and submitted to the Hon'ble Supreme Court with an affidavit duly approved and signed by the Defence Secretary (Annexure A-11). The Hon'ble Supreme court dismissed the contempt petitions seeing no reason to entertain the petitions. The learned counsel maintained that the impugned terms and conditions in this light are quite in order and no infirmity can be found in them. The learned counsel stated that the employees of the URCs are not totally at par with the regular Government employees and as such, it is not necessary that the terms and conditions of these employees should be declared under Article 309 of the Constitution, particularly when the aforesaid contempt petitions relating to the terms and conditions issued by the Government were dismissed.

4. In the end, the learned counsel stated that the present OA deserves dismissal, the same having been filed with *mala fide* intention.

5. We have considered the respective contentions of parties as also the material on record.

6. In the case of *M.Aslam* (supra) the Hon'ble Supreme Court gave the following directions:

- “(a) Status of the employees in the Unit Run Canteen must be held to be that of Government employees and consequently the Central Administrative Tribunal would

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have the jurisdiction to entertain applications by such employees.

- (b) That it by *ipso facto* would not entitle them to get all the service benefits which are available to the regular Government servants or even their counterparts serving in the CSD.
- (c) It would necessarily depend upon the nature of duty discharged by them as well as on the Rules, Regulations and Administrative Instructions issued by their Employer.
- (d) Employees of the Unit Run Canteens will draw minimum of the regular scale of pay available to their counterparts in the CSD.
- (e) The Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit Run Canteens at an early date, preferably within six months from the date of this judgment (Terms of Service conditions since formulated and issued to all concerned).
- (f) Service conditions of such employees will not be governed by the Fundamental Rules. It would be open for employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules."

7. On framing of the terms and conditions of service of the URC employees by the respondents, in a contempt petition the Hon'ble Supreme Court in its order dated 29.8.2002 (annexure A-10) observed as follows:

"The so-called guidelines which have been framed for determining the service conditions of Unit Run Canteen employees do not appear to us to be a set of rules framed by the Government of India, Ministry of Defence in determining the service conditions of the employees of these Unit Run Canteens. Prima Facie, therefore, there has been a violation of the Court's direction. But instead of pursuing and proceeding with the alleged contemnor, we think it appropriate to require the Secretary in the Ministry of Defence to examine the so-called guidelines and be satisfied as to whether the said guidelines can at all be held to be in compliance with the direction contained in the judgment of this Court dated 4th January, 2001 in C.A. Nos.1039-40/99 & batch.

It would be open for the secretary in the Ministry of Defence, if he comes to the conclusion that the aforesaid guidelines are not in conformity with the directions contained in the aforesaid judgment, then he may frame a set of rules governing the conditions of service of the employees of these Unit Run Canteens inasmuch as our directions in that judgment was to the Union of India to frame a set of rules governing the conditions of service, within two months from today."

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8. The Hon'ble Supreme Court has clearly declared that status of the employees in the URCs is that of Government employees. Obviously, the Central Administrative Tribunal has jurisdiction to entertain applications regarding the grievance of such employees. It is true that in the judgment regarding aforesaid contempt petitions the Hon'ble Supreme Court had required the Secretary, Ministry of Defence to examine the guidelines in question and frame a set of rules governing the conditions of service of these employees in case the guidelines were not in conformity with the directions of the Supreme Court. With the recognition of the status of these employees as that of the Government employees, it can be examined whether the terms and conditions in question were issued in accordance with the relevant rules. If these terms and conditions have not been issued under relevant rules their validity can certainly be examined. The Hon'ble Supreme Court has nowhere declared that the terms and conditions submitted on behalf of the Government in the contempt petitions had been issued as per relevant rules. The terms and conditions of the employees of the URCs can be at variance with those of the other employees of the Government in view of the nature of duties discharged by them, but the procedure and methodology of promulgating these terms and conditions have to be the same as in the case of employees of the Government. The Hon'ble Supreme Court itself in its judgment in *M. Aslam* (supra) has observed that although the employees serving in the URCs have the status of the Government servants, that by itself *ipso facto* does not entitle them to get all the benefits as available to regular Government servants or even their counterparts serving in the CSD. It would necessarily depend upon the nature of duties discharged by them as well as the rules and regulations and administrative instructions issued by the employer. In this light, applicants cannot be granted the first relief, i.e., pay, allowances and other facilities to the applicants at the same level as granted to the Central Government employees or their counterparts in CSD unless it is established that they discharge the same or similar duties and responsibilities as the Central Government employees or their

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counterparts in CSD. This would require a detailed comparative study of the nature and magnitude of the duties and responsibilities of applicants and their counterparts.

9. Article 309 of the Constitution reads as follows:

“309. Recruitment and conditions of service of persons serving the Union or a State. – Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”

10. The learned counsel of respondents was specifically asked under what provision of the Constitution or rules the terms and conditions in question have been issued. Respondents were not in a position to state under what provision these terms and conditions have been issued. Obviously, these rules and regulations are nothing more than administrative or executive instructions. They have not been issued under Article 309 of the constitution. When the employees of the URCs have been recognised as Government servants, rules regarding the terms and conditions of their service have to be issued under Article 309 of the Constitution of India.

11. A perusal of the terms and conditions in issue reveals that a large number of aspects such as HRA, DA, CCA, medical facilities, maternity leave, children education allowances etc., have not been considered at all. Basically respondents are at liberty not to grant the same terms and conditions to these employees as available to regular employees of the Government but they have to

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take a conscious decision for granting or denying various benefits and allowances as are available to the other Government employees. For taking such a decision various aspects of the matter such as nature and size of the duties and responsibilities of these applicants vis-à-vis those of their counterparts have to be taken into consideration in detail. This is not for the Court to conduct this detailed examination. It can be deliberated and considered by an expert body and it is for the Government to consider and decided upon the recommendations of the expert body to grant or deny various benefits and allowances.

12. In the facts and circumstances of the case as also the observations made above, the OA is disposed of directing respondents to constitute a committee immediately comprising Joint Secretaries of the Ministry of Personnel, Department of Expenditure Ministry of Finance, and the Ministry of Defence, which shall consider the demands made in this OA in regard to the terms and conditions of service of the employees of the Unit Run Canteens within a period of three months from the date of communication of these orders. This committee shall make detailed and reasoned recommendations on various terms and conditions. Respondent No.1 shall consider the recommendations of this committee and have the terms and conditions issued under Article 309 of the Constitution of India, etc., within a period of two months from the receipt of recommendations of the committee.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)
3.10.05