

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.2764/2004

New Delhi, this the ²³_{rd} day of February, 2006

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. N. D. Dayal, Member (A)

Ex. Sub Nitranjan Singh ...Applicant

(By Advocate: Ms. Jyoti Singh)

-Versus-

Union of India & Ors. ..Respondents

(By Advocate: Shri Pawan Kumar)

1. **To be referred to the reporters or not?**

Yes

2. **To be circulated to outlying Benches of the Tribunal or not?**

Yes

S. Raju
(Shanker Raju)
Member (J)

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**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. N. D. Dayal, Member (A)**

Ex.Sub Nitranjan Singh
Store Incharge (C.S.D. Wing),
Taurus Station Cantonment
Delhi Cantt.,
New Delhi.

...Applicant

(By Advocate: Ms. Jyoti Singh)

-Versus-

Union of India through

1. Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. General Officer Commanding
Chairman Taurus Canteen
Delhi Area Headquarters
Delhi Area,
Delhi Cantt – 10.
3. Deputy G-O-C,
Vice Chairman Taurus Canteen,
Delhi Area Headquarters,
Delhi Area,
Delhi Cantt- 110 010.Respondents

(By Advocate: Shri Pawan Kumar)

O R D E R

By Hon'ble Mr. Shanker Raju, Member (J):

By virtue of the present Original Application, order passed on 10.01.2004 by the respondents whereby the applicant's services have been terminated as well as order passed on 31.03.2004 in

appeal upholding the termination by the appellate authority are being assailed by the applicant.

2. Applicant was appointed as Storeman on contract basis in Taurus Shopping Arcade, Delhi Cantt on 31.07.2000 and his contract was extended for a further period of 60 days from 27.12.2000 and thereafter he continued. On 01.12.2002, a sum of Rs. 51,000/- was stolen from the cash drawer of one Ramesh Kaushik, Cash Operator, Station Canteen. A Court of Inquiry to inquire into circumstances of theft of cash was held. Thereupon, a show cause notice dated 6.5.2003 proposing punishment was served upon the applicant. Meanwhile, another show cause notice to propose termination was served upon the applicant on 3.10.2003. In response thereto, a copy of finding and opinion of court of inquiry and standing order were demanded. However, on an information dated 3.12.2003 communicated by the respondents that the documents are not essential for defence, the applicant preferred his interim reply to the show cause notice which culminated into termination against which the applicant filed an appeal, which having been rejected by non-speaking order, gave rise to the present Original Application.

3. Learned counsel of the applicant would contend that in so far as jurisdiction of this court is concerned, the applicant is to be deemed as a government servant and further stated, by placing reliance on a decision of the Apex Court in ***Punjab National Bank & Others vs. Kunj Behari Misra***, 1998 (7)SCC 84, that even if the rules do not provide ingress to principles of natural justice, the same has to be implicit in the rules. Learned counsel would

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contend that the applicant has been deprived of opportunity to effectively defend the allegation of misconduct levelled against him on being a party to the theft as neither court of inquiry report nor standing order have been served upon him, which has greatly prejudiced him and deprived him of a reasonable opportunity, which in turn violates principles of natural justice.

4. Learned counsel would contend that these documents are essential to ascertain whether any misconduct is attributable to the applicant as otherwise his performance during the tenure in Station Canteen was far from satisfaction without any material to show any unsatisfactory purpose.

5. Learned counsel also relies upon a decision of three Judges Bench of the Apex Court in ***State of Haryana & Anr. vs. Rattan Singh***, 1997 (2) SCC 491 as well as ***Ahmedabad Municipal Corporation vs. Virendra Kumar Jayantibhai Patel***, 1997 (6) SCC 650, to contend that even in case of appreciation of evidence if there is no material or the finding arrived at is perverse which fails to pass the test of common reasonable prudent man, termination has to be set aside.

6. This has been stated on the strength of the proceedings of COI delivered to the applicant where it is demonstrated that the upkeep of money was the responsibility of Mr. Kaushik, Cash Operator and as nothing has come in the knowledge of the applicant, who has not misconducted in any manner, the termination is unfounded, unreasonable and is an arbitrary exercise of the powers vested in the respondents, which violates fairness in procedure and the action is not transparent.



7. Shri Pawan Kumar, learned counsel for the respondents vehemently opposed the contentions and stated that in the matter of non-supply of report as per decision of the Constitution Bench of the Apex Court in **Managing Director, E.I.C.L. vs. B. Karunakar**, 1993 (4) SCC 727, on furnishing a report, first the prejudice has to be shown thereafter the court has jurisdiction to set aside the order.

8. Learned counsel, placing reliance on a decision of the Apex Court in **Harmohinder Singh vs. Kharga Canteen, Ambala Cantt.**, 2001(5) SCC 540, would contend that standing orders have to prevail and are binding. In the above backdrop, it is stated that as per the standing order dated 1.4.1987 of Taurus Shopping Arcade Station Canteen on account of a court of inquiry, which has adjudged the performance of the applicant, and having found him to be involved in theft held responsible for it. As per rule 30 (c)(iv) of the standing order on show cause notice, having not found the reply satisfactory, the services of the applicant have rightly been terminated and has relied upon a decision of the Apex court in **State of Punjab & Ors. vs. Balbir Singh**, 2004(11) SCC 743, to contend that when a preliminary investigation is done to adjudge unsatisfactory performance, applicant on a contract has no right to be retained.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. Taurus Shopping Arcade Station Canteen is an integral part of Headquarter Canteen at Delhi as well as Regimental Welfare Institution. The Apex Court in **Union of India vs. M. Aslam**, 2001

(SCC)(L&S) 302, while dealing with the case of *Union of India vs. Chote Lal*, 1999(SCC)(L&S) 332, where the employees serving in Unit Run Canteens were being paid through regimental canteen fund, held that they are to be treated for the purpose of jurisdiction of the Tribunal as government servants.

11. The Apex Court in ***Mishra Dhatu Nigam Limited etc. vs. M. Venkataiah and Others, etc. etc.*** 2004(1) ATJ (SC) 681, held that canteen workers are employees of principal employer and are entitled for regularization and in this backdrop, a decision of the Apex Court in ***M.M.R. Khan vs. Union of India***, 1990(Suppl.) SCC 191 has been relied upon. Moreover, the Apex Court in ***Dharma Nand & Anr. vs. Union of India & Ors.***, 2004 (1) SCC 1034, has held that employees of canteen appointed on a fixed term to be treated as government servants, with the following observations:

“2. The petitioner Dharma Nand was appointed on 28-3-1988 as salesman at Station Canteen, Kotdwar, Garhwal Rifles Regimental Centre, Lansdowne, U.P. and the second petitioner Dayal Singh was appointed on 15-9-1988 at the same canteen. Both of them were being paid consolidated amount of Rs.550 per month. Later, on 7-4-1989 their remuneration was enhanced to Rs.750 per month and they were appointed as salesmen in Golden Fish Canteen, Kotdwar and they were promoted as Storekeepers In-charge on 1-9-1995 and their remuneration was enhanced. In December 1998 the first petitioner was terminated from the service and he was informed that he had completed 5 years' tenure, and his service was no longer required. Similarly, the service of the second petitioner was also terminated. The counsel for the petitioners submits that these petitioners had been working as canteen employees under the control of the Defence Ministry and in view of the decision of the Court in *Union of India v. M. Aslam* (2001) 1 SCC

720) they should have been treated as Central Government Employees and their termination was illegal. In that case the question arose whether the employees working in the Canteen Stores Department Canteens under the Defence Ministry could be treated as government servants or not. This Court held that: (SCC pp.725-26, para 3)

“As has been stated earlier, for effective functioning of the defence services it is absolutely necessary to provide canteen facilities throughout the country and while the Canteen Stores Department serve as wholesale outlet it is the Unit-run Canteens which serve as retail outlet. A set of rules regulating the terms and conditions of service of the employees of Unit-run Canteens have been framed which confers all-pervasive control over the employees with the authorities of defence services. Though the funding of the Unit-run Canteens is not made out of the Consolidated Fund of India but it is made by the Canteen Stores Department and this department in its turn has formed a part of the Ministry of Defence, admittedly. In Parimal Chandra Raha v. LIC of India (1995 Supp (2) SCC 611) the employees of different canteens in different offices of Life Insurance Corporation whether were employees of the Corporation itself was under consideration by this Court. This Court evolved four principles which are quoted hereunder:

- (i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees become a part of the establishment and the workers employed in such canteens are employees of the management.
- (ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation not provide facilities to run a canteen, the canteen does not become part of the establishment.

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(iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available, etc."

3. Applying the aforesaid principles canteen employees were to be treated as government servants.

4. In the present case also, the petitioners Dharma Nand and Dayal Singh were working as canteen employees which was under the Defence Ministry and they were also entitled to be treated as government servants. The counsel for the Union of India submitted that the petitioners along with others were appointed as canteen employees on temporary basis and the appointment itself was given for a fixed term and on completion of the term, their services



were terminated. The counsel also drew our attention to the rules framed for this purpose for the canteen employees. The aforesaid Rules have been framed as if they were not government servants. The decision quoted above would show that the canteen employees should have been treated as government servants. That by itself is sufficient to hold that the Rules framed for such temporary appointment are not to be applicable to these employees.

5. We are of the view that if these petitioners should have been treated as government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service was that it was only for 5 years' tenure and their services were no longer required. We hold that termination was illegal and the petitioners are entitled to be reinstated in service forthwith. The petitioners are also entitled to get consequential benefits. The petitioners are entitled to get consolidated amount from the date of the termination till the date of judgment in Union of India v. M. Aslam, namely, 4-1-2001 and from that date till reinstatement they shall be paid minimum of the pay scale applicable to their counterpart serving in the CSD canteens."

6. The writ petition is disposed of."

12. If one has regard to the above, it is no more res integra that the applicant is a government servant and in the light of terms & conditions framed in 2001 by the Ministry of Defence, certain provisions had come up which have overridden the standing orders issued on 1.4.1987. As per the standing instructions laying down terms and conditions, there is a fixed tenure upto 60 years of age and methodology to dispense with the service by following due process of law including show cause notice and holding of disciplinary proceedings.



13. Assuming the standing order is applicable in the case of the applicant, yet services of canteen employees liable to be terminated on grounds of indiscipline, misconduct, theft etc. if found in connection with employer business or property. In the above backdrop, the episode of theft of Rs. 51,000/- from cash drawer is the bone of contention, which has been investigated into by court of inquiry wherein it is observed that the responsibility of safety of cash was of Shri Rakesh Kaushik working as Cash Operator, from whose possession and custody the amount had been stolen. Applicant while being examined has also directed Shri Kaushik to remain in the canteen even during lunch break till he used to lock of which key has been lost, but for want of any requisition for a lock awareness had been shown. Other witness had also stated that the responsibility of cash cell lies with the cash operator and there is no information regarding either loss of key or missing of lock.

14. Though the proceedings of COI had been delivered to the applicant but he has sought furnishing of a copy of the COI report as well as SOP i.e. the standing order. Respondents vide their order dated 3.12.2003 categorically stated that these documents have no bearing to reply the show cause notice and rather on interim reply holding that the applicant was responsible for safety as Supervisor of Grocery Counter, as documents sought are not considered essential, the applicant has failed to ensure non-presence of anyone inside and as the major part of responsibility was of the applicant, he has been terminated on the ground of misconduct and theft etc.

15. It is trite law that principles of natural justice are cardinal principles to upkeep and to ensure fairness in procedure and transparency in action of administration or quasi-judicial authorities. *Audi alteram partem* is the principle, which governs all the actions of administration. Principles of natural justice cannot be treated to be a straight-jacket formula but are dependent on the fact situation as well as circumstances of each case. However, when an essence of principles of natural justice and effective hearing *inter-alia* incorporates a reasonable opportunity to defend the show cause notice accorded to the applicant as the standing order is in tune of principles of natural justice but any rule which implicitly or by express provision does not contain an iota of reasonable opportunity, the rule of effective hearing is to be an integral part of such rule. In **Punjab National Bank's case** (supra), the Apex Court, while dealing with the provision to accord of an opportunity in case of disagreement by the disciplinary authority from the report of the enquiry officer, held as follows:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to

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give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

16. Recently, the Apex Court in **J.A. Naiksatam vs. Prothonotary Senior Master**, 2005 (1) SCC 219, held that principles of natural justice are to be read in the rule if not already given.

17. If one has regard to the above, demand of certain documents by the applicant which formed the basis of conclusion arrived at by the respondents in their show cause notice dated 3.12.2003 as to blameworthy conduct and failure to carry out duties arrived at on the basis of findings of the court of inquiry, withholding of such documents from the applicant has greatly prejudiced his case as the applicant was not in a position to effectively defend the show cause notice as for want of any conclusion arrived at as to his misconduct, an effective hearing has been lost. The denial of the documents on the ground that the same are not considered essential is not reasonable on part of the respondents. In our considered view, the demand of documents and supply thereof as part of reasonable opportunity to defend was to be implicit and implied in the rules. Any action de hors it would not be in consonance with the concept of fair hearing and reasonable opportunity.

18. As regards termination of the applicant, in **State of Punjab vs. Balbir Singh** (Supra), the Apex Court has an occasion to go into the concept whether a particular misconduct was the

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foundation or motive in termination and whether unsatisfactory performance can be the basis, observed as under:

“7. Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the “object of the enquiry”. If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of *State of Orissa v. Ram Narayan Das*. It was held that one should look into “object or purpose of the enquiry” and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld inasmuch as the purpose of the enquiry was held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

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11. In the light of the above legal position, we will now determine whether, in substance, the order of discharge in the present case is punitive in nature. For this purpose it would be necessary to ascertain, firstly, the “nature of enquiry” i.e. whether the termination is preceded by a full-scale formal enquiry into allegations involving misconduct on the part of the respondent, which culminated in the finding of guilt, and, secondly, the “purpose of the enquiry” i.e. whether the

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purpose of enquiry is to find out any misconduct on the part of the employee or it is aimed at finding out as to the respondent being unlikely to prove as an efficient police officer."

19. In the above conspectus, the following is the conclusion:

"17. In the present case, order of termination cannot be held to be punitive in nature. The misconduct on behalf of the respondent was not the inducing factor for the termination of the respondent. The preliminary enquiry was not done with the object of finding out any misconduct on the part of the respondent, it was done only with a view to determine the suitability of the respondent within the meaning of Punjab Police Rule 12.21. The termination was not founded on the misconduct but the misbehaviour with a lady constable and consumption of liquor in office were considered to determine the suitability of the respondent for the job, in the light of the standards of discipline expected from police personnel."

20. Having regard to the test laid down as a ratio decidendi, the respondents have served the applicant a show cause notice on the basis of court of inquiry, which has not been conducted for an assessment but to determine suitability of the applicant for job but was with a view to find out misconduct on part of the employee and which has culminated into the reason of misconduct, would certainly be a punitive order and without following due process of law and the same cannot be countenanced in law.

21. As regards contention put-forth by the learned counsel of the applicant that standing order would have to prevail, yet when pitted with principles of natural justice and question of law and in

the light of decision of the Apex court in **Dharma Nand's case** (Supra) even the employees appointed on fixed term Canteen being treated government servants cannot be terminated in such a slip shod manner.

22. As regards decision in **Managing Director, E.C.I.L. B. Karunakar's** case (Supra), the same applies in the case of full-fledged inquiry. Here the test of prejudice is very apparent on the face of it and being punitive order of termination with a view to victimize the applicant founded on his particular misconduct. As there is no material to indicate any unsatisfactory performance of the applicant, the decision would not be applicable in the present circumstances.

23. Another illegal infirmity, which has been crept in the appellate order wherein a detailed appeal, preferred to the appellate authority by the applicant, has been culminated into a bald, non-speaking order which on the face of it shows non-application of mind. As a quasi judicial authority, it is incumbent upon the administration to pass a reasoned order which not only facilitates the aggrieved party to raise his grounds but also convenient for the court in judicial review to examine the veracity of the reasons as for want of reasons both are handicapped. Moreover, transparency and fair play requires recording of reasons as an essence of administrative action and as a part of principles of natural justice.

24. For the foregoing reasons, the present Original Application is allowed, Impugned orders are set aside. Respondents are directed to re-instate the applicant. He would be entitled to all

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consequential benefits. These directions shall be complied with by the respondents, within a period two months from the date of receipt of a certified copy of this order. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

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