

17

Central Administrative Tribunal
Principal Bench

O.A.No.1042/2004

New Delhi, this the 15th day of July 2005

Hon'ble Shri S. K. Naik, Member (A)

Shri Vijay Pal
S/o Shri Parsu Ram
R/o Village & PO Narela
Delhi-39

..Applicant

(None for applicant)

Versus

1. Union of India
through the Secretary
Ministry of Defence
South Block, New Delhi
2. The Air Chief
Head Quarters Air Force
Vayu Bhawan, New Delhi-1
3. Officer Incharge
CSD Canteen
Air Force Station
Bhawana, Delhi

..Respondents

(By Advocate: Shri K.R. Sachdeva)

O R D E R

When the case was taken up for hearing on 18.12.2004, Shri Sandip Kumar, learned counsel for applicant had appeared and advanced his arguments in support of the OA. Shri K.R. Sachdeva, counsel appearing for the respondents too had given his reply but counsel for applicant had requested for the matter being kept as part heard, as he wanted to get some clarification on certain pleas advanced during arguments by the counsel for respondents. It was in this background that the matter had been kept as part heard and is being adjourned from time to time. However, when the matter was taken up for final disposal on 26.5.2005, no one had appeared on behalf of the applicant even on the second call. Learned counsel for respondents has appeared for the respondents and has concluded his arguments.



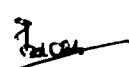
Accordingly, I proceed to decide the OA under Rule 15 of C.A.T. (Procedure) Rules, 1987.

2. The applicant in this OA has not challenged any specific order of the respondents but claims that while he was appointed by the respondents as a Civilian Helper in CSD Canteen, Air Force Station Bhawana and continued to so work upto 30.11.2003, his services have been terminated verbally on 30.11.2003. Neither any memo nor any charge sheet was served upon, nor was any domestic inquiry conducted into the matter. He, therefore, seeks a direction from the Tribunal to reinstate him with all consequential benefits.

3. Learned counsel for applicant has contended that the applicant was appointed on regular basis by the respondents and in support thereof, he has referred to the Annexures in the OA, which are copies of gate/entry passes issued to the applicant and was extended from time to time over the years. In addition, he has also annexed the photocopy of a number of payment vouchers, which indicate that while he was initially paid Rs.1000/- p.m., it was later on raised to Rs.1500/- p.m. upto to June 2000. Even the respondents in their reply state that the applicant was paid Rs.2875/- p.m. during November 2003.

4. Relying upon the judgment of the Hon'ble Supreme Court in **Union of India & others v. M. Aslam & others**, (2001) 1 SCC 720, the counsel has contended that as held by the Apex Court therein, he was to be treated as a Government servant and his service conditions were to be regulated under the rules and guide lines for the employees of Unit Run Canteen. The Department have not followed the said rules and guidelines and terminated his services arbitrarily without any reason. He has also referred to a number of experience and character antecedent certificates, which were issued to him by different Air Force officers, who had engaged and seen his work from time to time.

5. Contending that the respondents in violation of the principles of natural justice have arbitrarily terminated his services, the applicant has



submitted that a direction be issued to the respondents to reengage him and give him all the consequential benefits.

6. The respondents have contested the OA. Their counsel has vehemently denied the claim of the applicant. He has contended that there was no CSD canteen at the Air Force Station Bhawana until 1998 when it came into existence for the first time. The question, therefore, of the applicant being appointed during the year 1992 does not at all arise. The engagement, if any, of the applicant as a Shop Boy in the Regimental Shop cannot be termed as appointment by the CSD canteen. He has also denied that the Unit Run Canteen ever made any appointment on regular basis. Their shops were run by utilizing casual labourers on daily wage basis as and when required. Contending further he has submitted that the applicant being the son of a MES employee was residing within the campus and, therefore, the gate/entry passes had to be issued to him. Learned counsel has submitted that these passes cannot be claimed as a proof of his engagement on regular basis by the respondents. For security reasons entry passes are issued to those who reside inside the campus and, therefore, the applicant is trying to make much out of a gate/entry pass as a part of security arrangement.

7. With regard to the so-called oral termination, the learned counsel has explained that when the applicant was noticed to have been creating undesirable situations within the campus, he was told verbally that his permission to reside within the camp premises would be withdrawn unless all undesirable activities are stopped. He was neither specifically told to move out of the camp nor was any such order issued in writing. A warning was necessary in the interest of security of the camp, the learned counsel contends. Besides, the applicant without even applying for the post of Accounts Clerk, which had been advertised, descended on the residence of the Commanding Officer and demanded a job in the Station. It was in this background that he has now fabricated a case of oral termination.

8. Insofar as the reliance placed by the applicant on the various payment vouchers etc. is concerned, the learned counsel has submitted that these are payment receipts for the work done by the applicant as casual labourer on

7

daily wage basis. In fact, the receipts nowhere state that he was a regular employee. On the contrary, the receipts enclosed as Annexures to the reply clearly state that the payments have been made to the applicant as a casual labourer on daily wage basis. The enclosures annexed by the applicant himself too are inconsistent as in some places, they state that the honorarium is being paid, while at some places, they also state as salary but the learned counsel contends that best proof of any appointment is the letter of appointment, which has not been enclosed by the applicant for the obvious reason that he was never appointed. The photocopies of the receipts enclosed are only for the purpose of keeping the accounts and they cannot be construed to be the regular salary. Finally, the learned counsel has referred to para 3 of the Terms and Conditions of Service of URC Employees, which states as under:-

“3. These guidelines shall be called “The guidelines Regulating the Terms and Conditions of Service of Civilian Employees of URCs paid out of Non-Public funds” and shall come into force with effect from 01 Jun 2001. these guidelines shall apply to all civilian employees of URCs paid out of Non Public Fund Account but shall not be applicable to any person engaged on daily wages or on casual employment. These guidelines shall not be applicable to any Government employee, who may for the time being be detailed to work therein in any capacity whatsoever. For those employees who do not accept these terms and conditions, resignation from service as per provision of Para 46 to 48 of guidelines can be accepted. Only in case of dispute, should cases be referred to auth given in Para 45 of these terms and conditions.” (emphasis supplied)

9. It is clear from these terms and conditions, which had the approval of the Apex Court that the rules/guidelines prescribed therein shall not be applicable to any person engaged on daily wage basis or on casual employment. The applicant having failed to produce any letter of appointment on regular basis and that when he had been engaged only on casual basis for some period in the past, he cannot claim the benefits under the Terms and Conditions of Service of URC employees. He has, therefore, urged that the OA being devoid of any merit should be dismissed.

10. I have considered the pleadings of the applicant made in the OA and arguments advanced by the learned counsel for respondents. While the



applicant has relied primarily on the judgment of the Apex Court in the case of **Mohd. Aslam** (supra), the learned counsel for respondents has also relied on the same judgment but on the rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out of non-public fund, which has been framed consequent to the direction of the Apex Court in the same very judgment. While the applicant has relied upon the various gate/entry passes and some of the payment vouchers, he has, despite time given to him, failed to produce any evidence to show and prove that he was indeed appointed by the respondents as Helper or otherwise on regular basis. Since the Unit Canteen itself was registered during 1998, the claim of the applicant that he was appointed by them during 1992 has to be rejected. The reliance placed by the applicant in the case of **Mohd. Aslam** (supra) too has to be seen in the context in which the said judgment was passed by the Apex Court. In that case, the issue involved was whether employees of the Unit Run Canteen are Government employees and whether they could approach the Central Administrative Tribunal for the redressal of their grievances. The Apex Court, after considering the relevant facts, gave the ruling that the status of the employees of Unit Run Canteens has to be held to be that of Government employees and consequently, the C.A.T. would have the jurisdiction to entertain the application from such employees under the Administrative Tribunals Act, 1985. In that very judgment, it has also been held that that would *ipso facto* not entitle such employees to get all the service benefits as were available to Government servants and not even to those available to their counter parts serving in the CSD canteen. It was to depend upon the nature of duties discharged by them as well as on the rules and regulations that administrative instructions issued by the employer. It was under this direction of the Apex Court that the Quartermaster General's Branch in the Army Headquarter framed the rules regulating the Terms and Conditions of Service of Civilian Employees of URCs paid out of non-public fund and as has been extracted above, persons engaged on daily wage basis or on casual employment or those hired on contractual basis will not be covered under these rules/guidelines. Mere reliance on some of the character antecedent certificates, which, as the learned counsel for respondents has contended, were issued in individual capacity on humanitarian grounds for the purpose of helping the applicant in obtaining appointment elsewhere

will not provide any support to his claim that he was ever employed or appointed on regular basis, more so when there was no post in the canteen. I also find that after the canteen was registered and after the guidelines have come into existence, the respondents have created and advertised only one post to which the applicant has not even applied. I agree that the arguments advanced by the learned counsel for respondents that the applicant was indeed a casual employee and mere payment receipts would not change his status to that of regular employees and, therefore, he would not be covered under rules/guidelines on which he is placing reliance.

11. Under the circumstances, I find no merit in this OA and the same is accordingly dismissed with no order as to costs.

S. K. Naik
(S. K. Naik)
Member (A)

/sunil/