

Central Administrative Tribunal, Principal Bench

O.A. 1725/2004

New Delhi this the 7th day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Smt. Krishna Devi
W/o Late Hc/Ciph. Ishwar Singh
SRF Quarter No.05, Type-I,
Chhawla Camp,
New Delhi-110 071.

...Applicant

By Advocate: Shri Yogesh Sharma.

Versus

1. Union of India through the Secretary,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The Director General,
BSF Head Quarters,
Sena Bhawan,
CGO Complex,
Lodhi Road,
New Delhi.
3. The Commandant,
25 Bn., BSF, Chhawla Camp,
New Delhi.

....Respondents

By Advocate: Shri R.N. Singh.

ORDER

The applicant was employed on compassionate ground at the rate of Rs.1000/-per month on 20.10.1997 as Saleswoman in the Unit Canteen of BSF on temporary basis and her remuneration was payable "out of Unit Canteen Profit". She has been removed from the service w.e.f. 15.2.2004 (A/N). The applicant has impugned the order of removal from service dated 13.2.2004, which is at page 8 of the OA on the ground that it is in violation of the principles of natural justice since opportunity of hearing has not been provided to her and further that she should be deemed to be in regular service of the respondents. She has prayed for quashing of the order dated 13.2.2004 and her reinstatement in service with all consequential benefits and further for a direction to the respondents to treat her as a regular government servant in the light of the judgment of the Hon'ble Supreme Court in Union of India Vs. M. Aslam and Others.

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2. The respondents contesting the OA pleaded that the applicant, widow of ^{HCA} (Cipher) Late Shri Ishwar Singh Dahiya of 96 Bn., BSF, was appointed as Saleswoman in the Unit Canteen of 25 Bn. BSF w.e.f. 20.10.1997 on temporary basis on fixed payment of Rs.1,000/- per month out of the Unit Canteen profit in order to augment her income since she had no source of income other than family pension and keeping in view that she had school going children. BSF is the largest Para Military Force of the country and 30% of its personnel are deployed on Internal Security duties in Jammu in Kashmir to fight against the militancy and remaining are deployed at international borders. On an average, 700 personnel loose their lives every year and BSF is committed to rehabilitate their dependents. Though the husband of the applicant died a natural death, but on humanitarian ground since her children were young, she was engaged as a Saleswoman on a consolidated pay of Rs.1,000/- per month which had been increased to Rs.2,000/- with effect from December, 1998 on purely temporary basis in Unit Canteen to be paid out of the profit of the Unit Canteen. She was also allotted quarter constructed out of BSF private funds in BSF Campus Chhawla itself so that she could avail of free medicare facilities, free transportation of her school going children apart from other facilities available in the campus for serving BSF personnel in response to Administrative Directorate, BSF Hqrs., New Delhi letter dated 18.9.1997 and orders dated 16.11.1998. The Unit is also providing her uniform cloth from Unit Welfare Centre for stitching, in double, in comparison to a family of serving BSF personnel, to increase her income. The applicant was engaged on temporary basis to be paid out of profit earned by the Canteen of 25 Bn. BSF which is a subsidiary of BSF welfare fund. She was neither a Government employee nor were the Central Civil Service (CCA) Rules applicable to her. It was, therefore, prayed that the application should be dismissed.

3. In the rejoinder, the applicant reiterated her own case and controverted the allegations of the respondents.

4. We have heard the learned counsel for the parties and gone through the relevant record.

5. The foremost question that arises for consideration is whether the applicant is holding a civil post under the Central Government and there existed master and servant

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relationship between the applicant and the respondent and this Tribunal has jurisdiction to entertain and decide this application. Section 15 of the Administrative Tribunals Act, 1985 defines the jurisdiction, powers and authority of the Central Administrative Tribunal. As per sub section (1) the Tribunal exercises all jurisdiction, powers and authorities which were exercisable earlier by all courts, except the Supreme Court, in relation to :

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
 - (i) a member of any All-India Service; or
 - (ii) a person [not being a member of All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian (not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a persons appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation – For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.].

6. The counsel for the respondents referring to this provision has vehemently argued that the applicant was appointed as Saleswoman in the Unit Canteen of the BSF and was being paid out of the profit earned by the Canteen and not out of the Consolidated Fund of India and further the canteen was also not a department of BSF, therefore, the applicant was not in Civil Service of the Government so she has no right to invoke the power and jurisdiction of the Tribunal and maintain the present application before it. It was further argued that she was appointed on humanitarian ground when she was in distress and now her two children are in regular employment with BSF, so she does not need financial help any more . She was removed since other families of BSF personnel, who died in harness, were to be rehabilitated.

7. Conversely, the counsel for the applicant has relied upon the judgment of the Single Bench of Hon'ble Delhi High Court in W.P. (C) 3456/2003 in Sudershana Devi

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Vs. U.O.I. dated 7.10.2004 where the petitioner, who was appointed as Aya under an order dated 29.8.1987 in the pay scale of Rs.400-10-550, was sought to be removed after 15 years of service by order dated 5.11.2002. The Hon'ble Court held that the dismissal of the applicant from service without giving her show cause notice was violative of the principles of natural justice and further it was illegal since the petitioner was being removed from service after rendering 15 years long service on the ground that applicant's son had been given employment as this stipulation was not incorporated in her appointment letter. The Hon'ble Court had set aside the order and directed the reinstatement of the petitioner in service.

8. A decision is an authority for what it decides and not what could be inferred from the conclusion. The question whether Aya was in Government service and there was master and servant relationship between the applicant and the respondent – Union of India was neither raised nor was it decided in the judgment. The judgment also does not show that the Writ Petition has arisen out of a proceeding filed before the Tribunal. It appears that the petitioner, whose services were terminated after she had rendered 15 years service without observance of the principles of natural justice and for no good reason, had invoked the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The question in the present application is whether the Tribunal has jurisdiction and power to entertain this OA filed by the applicant. The Tribunal is a creature of Administrative Tribunals Act, 1985 (the Act) and its jurisdiction is limited to the four corners of the provisions of the enactment which has created it. The Tribunal cannot assume jurisdiction where it does not have. The first question that besets the Tribunal is whether it has the jurisdiction power and authority vested in it by Act, to adjudicate upon the dispute raised.

9. The applicant was appointed as Saleswoman in the Unit Canteen of BSF by an order dated 23.10.1997, which is Annexure R-I to the counter-reply. It reads as under:-

“

ORDER

As approved by the competent authority Smt. Krishna Devi W/o Late No.77001079 HC/Cipher Ishwar Singh Dahiya has been appointed as Salesman in Unit Canteen w.e.f. 20.10.1997 on temporary basis at the rate of Rs.1000/- (Rupees one thousand only) P.M.

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2. The salary will be paid to the above widow out of unit canteen profit." 12

10. Vide order dated 16.11.1998 her salary was raised to Rs.2000/-. In fact, the respondents filed a copy of the order dated 16.11.1998, by which the salary of BSF Widows "who were employed out of Private Funds by the Units/Sectors/Frontiers and Training Institutions were to be in skilled grade of Rs.2200-50-2800 and Unskilled Rs.2000-50-2100 with immediate effect". She was decided to be removed from service by one month notice dated 14.1.2000, which reads as under:-

" To

Smt. Krishna Devi W/o
Late HC/Ciph Ishwar Singh
SRF Kquarter No.05 Type-I,
Chhawla Camp, New Delhi-110 071.

Sub: Notice for Removal from Private Job.

You were appointed as salesman in Unit Canteen on temporary basis out of unit canteen profit w.e.f. 20.10.1997 vide this Unit order No.Canteen/25Bn./97/21146-47 dated 23rd October, 1997 when you have no any income sources. Now your daughter and son has been enrolled in BSF as ASI/Clk and Const (GP) respectively.

2. In pursuance of HQ. DG BSF, Adm. Dte. L/No.26/11/2003/Adm-i/BSF/22310-11 dated 24.12.2003 and DIG(HQ)FHQ /No.60/83/Prov/DIG(HQ)/BSF/2003/17144-45 dated 26th December, 2003, it; is to inform that your private job is hereby terminated w.e.f. 15th February, 2004 (AN) so that needy widows of this unit as well as other units can be adjusted for private job.

11. The order of removal from service dated 13.2.2004 reads as under:-

" ORDER

In pursuance of HQ. BSF. Adm Dte letter No.26/11/2003/Adm-I/BSF/22310-11 dated 24.12.2003 DIG (HQ) FHQ letter No.60/83/Prov/DIG(HQ)/BSF/200317144-45 dated 26th December, 2003 and this unit letter No.RR/25 Bn/Apptt/2003/1211-16 dated 14th January, 2004 Smt. Krishana Devi widow of Late HC/Ciph Ishwar Singh of 96 Bn. BSF is hereby removed/terminated from private job with immediate effect from 15.2.2004 (AN)."

12. Her representation dated 31.5.2004 was not acceded to vide order dated 18.8.2004 (Adm. Dte/GR /Cell) on the ground that "your financial condition is satisfactory and your daughter and son have already been serving in BSF as ASI/Clk and Ct. (GD).

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13. The order of appointment clearly showed that applicant's salary was to be paid out of Unit Canteen profit. The question whether an employee of Unit Run canteen of the Canteen Stores Department of the Ministry of Defence was in the service of the State and was a Government employee and the relationship of the master and servant existed between the petitioner and the respondent came up for consideration before the Hon'ble Spreme Court in **U.O.I. and Others Vs. M. Aslam and Others, JT 2001 (1) SC 278**. The Hon'ble Supreme Court laid down the factors which were to be taken into consideration where the employees serving in the Unit Run Canteens can be held to be Government servants. In para 3 of the order it was laid down as under:-

“3. In order to decide whether the employees serving in the Unit-Run Canteens can be held to be Government servants, it is necessary to find out the mode of appointment of such employees, Rules and Regulations governing the conditions of service of such employees, fund from which such salary is paid, and other factors which really determine the existence of relationship of master and servant between the Government and the employees”.

14. The Hon'ble Supreme Court then examined the establishment and funding of canteen store department and Unit-Run Canteens in the Army, Navy and Air Force. It also noticed the principles laid down in the judgment in **Parimal Chandra Raha and Others Vs. Life Insurance Corporation of India and Others, JT 1995 (3) SC 288** where the court considered the question whether the employees of department canteens in Life Insurance Corporation were employees of the Corporation. The Hon'ble Court has evolved 4 principles:-

“(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees became 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 to provide facilities to run a canteen, the canteen does not become part of the establishment.

(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.

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(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 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.”

15. Applying the aforesaid principles to the facts of the case before it the Hon'ble

Court held :

“.....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 DepartmentBut in the case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds from 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 Canteens 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 and consequently the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions of Administrative Tribunal Act”.

16. The Hon'ble Apex Court further held that even though the employees serving under Unit-Run Canteens would be treated as Government servants, but that did not necessarily mean that the service conditions of such employees were governed by the

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Fundamental Rules. It was also observed that it would be open for the employer to frame ²⁹ separate conditions of service of the employees or to adopt the Fundamental Rules.

17. A careful reading of the judgment showed that the Hon'ble Apex Court has decided the question on close examination of the mode of appointment of the employees of the Unit-Run Canteen, Regulations regulating the service conditions of such employees, the fund from which their salary was paid and other factors which could determine the existence of relationship of master and servant between the Government and the petitioners of that case.

18. In the backdrop of the principles of law evolved in the above case now the facts of the present case be examined. The applicant was employed as Saleswoman in the Unit Canteen of the BSF. BSF is a Para Military Force. Nothing has been brought on record for the Tribunal to hold that it is also part of the defence department, in other words canteen department of the Armed Forces or that there is a Canteen Department functioning in the BSF and it is providing finances for running of the Unit Canteen. There is also no allegation and proof that the salary of the applicant was being paid from the money which was provided by the BSF, or by the Government. Contrarily, the appointment letter of the applicant clearly stipulated that the salary would be paid to the applicant out of the profit earned by the Canteen. It is also stated by the respondents that Unit Canteen are functioning as subsidiary of BSF Welfare Fund. Her salary was being paid of out the profits earned by the Unit from the sale proceed of the Unit Wet Dry and Liquor and Canteen and she was provided residential accommodation constructed out of the BSG Private Funds in which the Government has not contributed.

19. In Union of India and Another Vs. Chotelal and Others, 1999 SCC (L&S) 332 wherein the Hon'ble Supreme Court was considering the question whether the Dhobis who were appointed to wash the clothes of cadets at NDA at Khadakwasla who were paid their salary out of the regimental fund were holding civil post and were amenable to the jurisdiction of this Tribunal or not. The salary was being paid to Dhobis out of Regimental Fund which in accordance with para 801 (b) of Regulation mean "comprising all funds, other than public funds, maintained by a unit". The public funds, as defined in para 801 (a), included all funds which are financed entirely from public money, the unexpended

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balances of which was refunded to the Government . The Hon'ble Supreme Court held as 21

under:-

“6. In view of the characters of the Regimental Fund as discussed above, we have no hesitation to come to the conclusion that the said Fund cannot be held to be a public fund by any stretch of imagination and the dhobis paid out of such Fund cannot be held to be holders of civil posts within the Ministry of Defence so as to their service conditions. It is of course true that the Commanding Officer exercises some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence”.

20. Now we again advert to the facts of the case in hand. From the perusal of the counter-reply filed on behalf of the respondents, it appears that the authorities of the respondents exercised control over the Unit Canteens. The constitution of the Canteens and the source of its funding have been specifically stated to be private and non-governmental. According to the allegation of the applicant in the rejoinder, the canteens are financed by the BSF, but no such allegation was made in the application. Any how, what is important is the source of money which is used for making payment of the salary to the applicant. The documents, copy of which have been filed by the applicant specially the appointment letter would clearly show that the salary of the applicant, who was appointed on compassionate ground to tide over the financial distress faced by her on account of untimely death of her husband, was out of profit earned by the Canteen. It is neither alleged nor proved that the profit which were earned by the Canteen were put into the Consolidated Fund of India or the public fund. Nothing has been brought to our notice for us to discard the allegation of the respondents in the counter that the Unit Canteen is being run as a subsidiary of BSF Welfare Fund. There is no allegation that the money comes into this Fund from the government exchequer or the Consolidated Fund of India. If no government money is being used for running the Unit canteen or payment of salary to its worker it will not be possible to hold the applicant is an employee of the government. The applicant was also provided residential accommodation in a quarter which were built out of BSF private fund and it was not government property. Therefore, even if it is assumed that the Canteen were run by the BSF out of non statutory obligation, it will not necessarily lead to an inference that the applicant is holding civil post under the respondent – BSF and

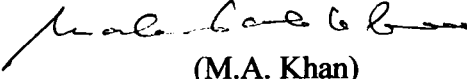
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consequently a Government employee. Applying the four principles evolved by the Hon'ble Supreme Court in LIC's case (Supra) on the fact of the present case also, it will not be possible for the Tribunal to conclude that the applicant was a Government employee holding a civil post under the respondents and the relationship of master and servant existed between the applicant and the respondents. We are fortified in this view by the law laid down by the Hon'ble Court in the case of Union of India and Others Vs. Chhote Lal and Others (supra).

21. Consequently, we hold that the applicant is not holding any civil post in BSF, she was not a Government servant, consequently the Tribunal will not have any jurisdiction to entertain this OA.

22. In view of the above finding, we need not dwell with the other contention that an opportunity of hearing has not been provided to the applicant before the impugned order of termination was passed and the principles of natural justice were violated or that she should be deemed to be in regular service.

23. As a result of the above discussion, we are constrained to hold that the Tribunal does not have jurisdiction to entertain this application and reject it leaving the parties to bear their own costs.


(M.A. Khan)
Vice Chairman (J)

Rakesh