

12

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1857/2004

New Delhi this the 7th day of February, 2005.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Sh. S. Sinha,
S/o late Sh. Sarojakasha Sinha,
C/o Bhupender Singh,
29, New Arya Nagar,
Medical College,
Meerut City,
Meerut.
 2. A.G. Das,
S/o Dhirendra Dass,
C/o Bhupender Singh,
29, New Arya Nagar,
Medical College,
Meerut City,
Meerut.
 3. Bhupender Singh,
S/o Dharavir Singh,
29, New Arya Nagar,
Medical College,
Meerut City,
Meerut.
 4. Pankaj Jain,
S/o late Sh. Surender Prakash Jain,
R/o 9, Prem Prayag Colony,
Near Medical College,
Garh Road,
Meerut.
 5. Raka Jain,
W/o Sh. Pankaj Jain,
R/o 9, Prem Prayag Colony,
Near Medical College,
Garh Road, Meerut.
 6. Miss Anju Gill,
D/o late Sub./Clk. Gurnam Singh,
R/o H.No. 97, Gandhi Mohalla,
Kaseru Khera, Meerut Cantt.
 7. Reema Rani,
D/o late Hav. Satendra Kumar,
R/o H.No. 223/18,
New Sainik Vihar Colony,
Near S.B.I., Anoop Nagar,
Fazalpur, Meerut Cantt.
- in* (through Sh. A. K. Shukla, Advocate)

....

Applicants

Versus

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Chairman Pine Canteen,
Headquarter, 9 Infantry Division,
C/o 56 APO.
3. Col. K.K. Manglik,
Canteen Officer,
HQ.9 Infantry Division,
C/o 56 APO.

.... Respondents

(through Sh. A.K. Bhardwaj, Advocate)

ORDER

Hon'ble Sh. Shanker Raju, Member(J)

Applicants impugn respondents' order dated 31.01.2004 whereby they have been denied back wages for the period from 14.3.2002 to 18.3.2003. They seek wages for this period with interest.

2. Applicants were employees of Unit Run Canteen in various canteens in the light of decision of the Apex Court in **Union of India Vs. M. Aslam** (JT 2001 (1) SC 278). They had been held to be holder of civil post. Terms and conditions as the respondents were given liberty by the Apex Court effective from 4.1.2001 due to unconscionable terms, the refusal of the applicants to accept the terms resulted in their termination which was assailed in OA-1530/2002.

3. CP regarding terms and conditions was subjudice before the Apex Court in CPC-243-244/2001 where the learned ASG made a statement on 29.10.2001 that all termination orders either have been recalled and further as a policy decision taken on 17.9.2002. It is decided that those who have not accepted the terms and conditions, termination would not be affected.

4. Accordingly, vide order dated 24.02.2003 passed in OA-1530/2002, the following directions have been issued:-

"13. In the result, for the foregoing reasons, termination orders are not legally sustainable and are accordingly quashed and set aside. However, the question regarding acceptance of terms and conditions and Applicants' entitlement to consequential benefits shall be subject to the final outcome in contempt petition sub-judice before the Apex Court as well as to the terms and conditions to be finally approved by the Apex Court.

14. With these observations the OA is disposed of. No costs."

5. In pursuance thereof the applicants who were on stay against termination were put back in service and made a representation for back wages. The respondents rejected the claim on the ground that as the conditions of service were found unconscionable, the applicants who had not worked during this period and on their own volition kept away from the duty are entitled to payment of either salary or bonus.

6. Learned counsel of the applicants states that if a policy decision was taken by the respondents and in view of the statement made by ASG that other similarly circumstanced employees have not been terminated and were reinstated, the applicants' termination was patently illegal and principle of "no work no pay" could not be applicable as what prevented the applicants from joining the duties and is an illegal act of the respondents. Accordingly, they are entitled for back wages. Non-grant of the same would be the invidious discrimination under Article 14 of the Constitution of India.

7. On the other hand, respondents vehemently opposed the contentions and stated that in the light of order passed by the Apex Court in CP(supra) on 20.8.2002 giving liberty to the respondents to frame their own conditions of service and further the conditions of service now framed by the respondents. It is established that the terms and conditions have not been found illegal or unconscionable. Accordingly, in the light of the decision of the Tribunal (supra) consequential benefits cannot be granted to the applicants and as per the terms and conditions now framed, those who are in service when the conditions are prescribed from 04.01.2001 would get minimum of the pay

scale. The applicants who had been performed duties and were not in service for the period the back wages claimed are not entitled.

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

9. It is trite law that if termination of an employee is found to be patently illegal and the decision is rendered on merits, as a natural consequence, back wages are to be accorded. Principle of "no work of no pay" though is a recognized principle but on an exception when the employee has been terminated from the performance of duties and has been put off by the government from the duty without any fault which prevented the employee to perform his duties. In that event one he is entitled for payment of back wages. In the Rules applicable to civil servants in Government FR 53 and FR 54 provide period to be treated as spent on duty when the orders are set aside on merits.

10. In the OA earlier filed by the applicants having come to a conclusion that the earlier terms and conditions having been found conscionable and there was a dispute between the parties which ultimately put at rest by the Apex Court in its order dated 20.8.2002 with the following directions:-

"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 in the Ministry of Defence, 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

-5-

Union of India to frame a set of rules governing the conditions of service, within two months from today. List after two months.”

11. If one has regard to the above, giving liberty to the respondents to form set of rules and conditions of service, discretion was given to the Secretary, Ministry of Defence. In view of earlier guidelines to frame new set of rules, very act of the respondents in framing the new set of conditions vide letter dated 28.4.2003 clearly shows that these conditions have been revised and reframed. In these, conditions and terms, fixation of pay is to be made of employees as on 04.01.2001 to the minimum of the pay scale and where the minimum pay scales were more on 04.01.2001, the pay would be a consolidated of Rs. 3000/-.

12. Applicants services were dispensed with and they have obtained stay in the earlier proceedings. They have been denied payment for the period from 14.3.2002 to 18.3.2003 on the ground that they have not accepted the terms and conditions. The very fact that ASG made a statement on 29.10.2001 where all remaining orders have been recalled and as a policy decision dt. 07.02.2001 decided not to terminate the services, the action of the respondents is certainly in variance with the undertaking given by ASG who has all authority and command representing Government of India, a Constitutional Post, his statement has to be given credence. Non-performance of duty is not attributable to the applicants but because of the action of the respondents whereby the terms and conditions so conscionable though it could have been accepted. However, we find that the respondents while rejecting the request of the applicants for back wages for the claimed period dismissed on the ground that there is no direction of either Apex Court or the Tribunal in this regard. We must make it clear that this relief of the applicants and the issue has been left open and was not adjudicated. Accordingly, we find that identically situated employees who have also refused the terms and conditions have not been terminated or they have been

taken back. Thus it is not made clear as to whether the reinstated employees whose termination has been taken back in pursuance of ASG undertaking and policy decision dated 17.9.2002 are being paid or not for the period they remained out of employment, yet the reasons recorded in the order passed by the respondents are not justifiable and rather no reasons have been recorded.

13. In the result, OA is partly allowed. We direct the respondents to re-examine the case of the applicants for grant of back wages for the period as claimed in the OA having regard to the observations made above and also keeping in view the fact that no violation of Article 14 of Constitution of India is made. This shall be done by a detailed and speaking order to be passed within two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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

/vv/