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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.689/2004

New Delhi, this the 11th day of February, 2005

HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Major (Retd.) T.R. Sharma,
S/o Shri Kirpa Ram Sharma,
R/o Village & P.O. Jarol,
Tehsil Sunder Nagar,
Distt. Mandi (Himachal Pradesh)

.... **Applicant**

(By Advocate : Shri A.K. Shukla)

Versus

1. Union of India through
The Secretary,
Ministry of Defence, Govt. of India,
New Delhi
2. The Chief of the Army Staff,
Army Headquarters,
Sena Bhawan, New Delhi
3. Quartermaster General's Branch,
Deputy Directorate General,
Canteen Services,
Army Headquarters,
L Block, Room No.16,
Church Road, New Delhi
4. Colonel G.S. Chugh,
Chairman Managing Committee,
CO 21 SATA Regiment
C/o 56 APO
5. Brig A.S. Anand,
Commander,
11 Corps Arty. Brigade,
C/o 56 APO

... **Respondents**

(By Advocate: Shri S.K. Gupta & Shri Rajinder Khatter)

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ORDER

By Hon'ble Mr. S.K. Malhotra :

By filing this OA, the applicant has prayed that the impugned order dated 19.2.2004 (Annexure-A) whereby his services have been terminated w.e.f. 25.2.2004 may be quashed and set aside. He has also prayed for setting aside the impugned order dated 20.2.2004 to the extent that it gives temporary employment to him for a period of three months only.

2. The facts of the case, in brief, are that the applicant, who was working as a Major in the Army, after retirement was appointed as Manager of the Unit Run Canteen (URC), i.e., Vajra Station Canteen, Sarkaghat w.e.f. 09.10.2000, on contract basis. The contract was to terminate on the 31st March of every year and the new contract was to be effective from the 2nd April of the said year. He was placed on probation for a period of 3 months. Thereafter he continued working and from time to time his appointment was renewed. He has been continuously working on the said post except for a break of 2 days given by the respondents from 25.2.2004 to 27.2.2004. It is stated by him that as a consequence to the direction given by the Hon'ble Supreme Court in the case of **Union of India vs. Mohd. Aslam & Others** vide judgement dated 4.1.2001, the respondents-department had framed Rules dated 28.4.2003 regulating the Terms and Conditions of the employees of URC. According to Rule 5 of the above Rules, all employees shall be under probation during the first year of their service and on successful completion of their probation, they will be termed as permanent. It has been contended that instead of regularizing and absorbing the applicant as Manager, the respondents issued letter dated 19.2.2004 whereby his services were terminated w.e.f. 25.2.2004. However, on the next day, vide letter dated 20.2.2004, he was again appointed as Manager for another period of 3 months w.e.f. 27.2.204 after giving him a break of 2 days w.e.f. 25.2.2004. The applicant made a representation vide his letter dated 25.2.2004 stating that his services cannot be terminated till he attains the age of superannuation as per Rule 27 (a) of the Terms and Conditions issued by the respondents. No action was taken on his request. On the other hand,

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the respondents issued an advertisement in the newspaper on 27.2.2004 advertising the post of Canteen Manager for the Canteen in which he was working as a Manager.

3. It has been contented by the applicant that he had joined the post of Manager on 09.10.2000 and had completed one year of probation on 08.10.2001. As per Rule 5 of the Terms and Conditions governing the services of civilian employees of URCs issued by the Government vide letter dated 28.04.2003 (Annexure R/1), the applicant became a permanent employee. Further as per above Rules, the employees of the URCs are entitled to the benefits of gratuity, bonus, leave encashment etc., which benefits are allowed only to the permanent employees and not to ad-hoc or contractual employees. The action on the part of the respondents to terminate his services vide letter dated 19.2.2004 and his re-employment vide letter dated 20.2.2004 for a period of 3 months are against the above terms and conditions and as such these orders deserve to be quashed and set aside.

4. The respondents have filed a counter reply in which they have stated that in the case of **Union of India vs. Mohd. Aslam** (JT 2001 (1) SC 278) the Hon'ble Supreme Court had directed the Government to frame the service conditions in respect of the employees working in URCs. According to para 3(a) of the Rules regulating the terms and conditions of service of civilian employees of URC, issued vide letter dated 28.04.2003 (Annexure R-I), these service conditions are not applicable to any employee engaged on daily wages or on a casual employment or to those hired on contractual basis and service conditions of these persons are required to be regulated by their appointment letters. As the applicant was taken on contract basis and was governed by the Terms and Conditions of the contract, he cannot take the benefit of the Terms and Conditions issued by the Government vide letter dated 28.4.2003. He had signed a fidelity bond in which it had been specifically stated that he would abide by all the provisions given in the SOP of Vajra Station Canteens. Para 47 (a) & (b) of SOP, which are applicable in his case, are extracted below:

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"Terms and Conditions of Service"

47. (a) Ex-servicemen and other staff will be engaged for a period of one year initially on contract basis agreed by the parties. The period of contract may be renewed for one year at a time subject to his continued satisfactory performance and recommendations by Canteen Manager.

(b) The Tenure of Manager, OIC Canteen, Director Canteen Cell (DCC) and Asst. Director Canteen Cell (ADCC) employed in Canteens by the fmns/units, incl Ex-servicemen Canteens, will not exceed three yrs under any circumstances."

It would thus be clear that the applicant was employed on contractual basis and according to Para 47 (b) reproduced above, the tenure of the Manager cannot exceed 3 years under any circumstances. As he was employed on contract basis, the Rules formulated vide letter dated 28.4.2003 are not applicable in his case. Besides, an employee cannot be considered to have become permanent by merely having served for more than one year. This needs to be confirmed by the employer, which has not been done in his case. Being a contractual employee, the termination is in accordance with the relevant rules.

5. The applicant has filed a rejoinder and also an additional affidavit. It has been contented that a letter was issued on 31.1.2002 by the respondents-department whereby the contract of all the employees of Vajra Station Canteen was terminated on 31.3.2002. Thereafter an option was sought from the employees as to whether they wanted to be governed by the old Terms and Conditions of the contract or by the new Terms and Conditions. As the employees had opted for the new Terms and Conditions, appointment letters dated 22.3.2002 were issued in respect of all the employees including the applicant (Annexure-E Colly.). According to him, by issuing this letter, the contractual employment has come to an end and he is deemed to have been appointed under the new Terms and Conditions and was on probation for a period of one year. After completion of probation period, he has become a permanent employee and in terms of the new Terms and



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Conditions, he is entitled to work till attaining the age of 60 years. In this connection, a reference has been made to Para 42 of the SOP (Annexure-F) in which it has been mentioned that w.e.f. 4.1.2001 an employee on successful completion of probation period of one year service, will be termed as permanent employee until he superannuates, resigns or his services are terminated.

6. I have heard both the learned counsel for the parties and have also perused the pleadings on record.

7. When the case came up for initial hearing on 18.3.2004, an interim order was passed restraining the respondents from terminating the services of the applicant. This order has been extended from time to time and is still continuing. The respondents were directed to proceed with the selection of the candidate for the post of Canteen Manager against the advertisement issued by them, but were restrained from appointing the selected candidate to the post.

8. During the course of arguments, the main point raised by the learned counsel for the applicant was that in the judgement of **M. Aslam (supra)**, the status of the employees of the URC was held to be that of a Government employee. Even though the applicant was appointed on contract basis as per appointment letter dated 4.10.2000, but after completion of one year's probation, he is deemed to have acquired the status of a permanent Govt. servant and his services cannot be terminated before attaining the age of 60 years. In this connection, he cited the judgement of the Hon'ble Supreme Court in the case of **Dharma Nand & Anr. vs. UOI and Ors.** in the writ petition (civil) No.687 of 1998 in which it was held that the services of the two sales men appointed in 1988 in URC could not have been terminated on the ground that they were employed on temporary basis for a period of 5 years and their services were no longer required. The termination order was held to be illegal. He also referred to another judgement of the Hon'ble Supreme Court 1996 (6) SLR 233 in the case of **All India Statutory Corp. etc. vs. United Labour Union and Others etc.** (para 69) in which it has





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been observed that prior to abolition of contract labour system, the contract labour doing work of perennial nature in the establishment of principal employer had the protection of statutory provisions of law but after its abolition, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they had been working earlier.

9. Besides the above, the learned counsel for the applicant also cited the judgement dated 2.5.2003 of this Tribunal in OA No.2069 and 2074 of 2002 in case of **Hav. Kewal Singh and Another** in which case the termination orders were quashed, mainly on the ground that the terms and conditions under which their services were terminated, were found to be not in conformity with the Apex Court's decision.

10. On the other hand the learned counsel for the respondents stated that the appointment given to the applicant was contractual on a consolidated pay, which is evident from para 4 of the appointment letter dated 4.10.2000. It is clearly mentioned in this para that the contract will terminate on 31st March every year and a new contract will be effective from 2nd April or the day of joining of the individual whichever is later. Later the applicant also signed a fidelity bond in which he had undertaken to abide by the terms and conditions and other relevant provisions given in the SOP of Vajira Station Canteen. According to para 47 of the SOP reproduced in para 4 above, the ex-servicemen are engaged for a period of one year initially on contract basis, which could be renewed for a further period of one year at a time. The tenure of the Manager of the Canteen cannot exceed three years under any circumstances. The services of the applicant were never made permanent. Even according to the appointment letter dated 22.3.2002 his engagement was in terms of the provisions given in the SOP, which means a contractual appointment for a period not exceeding three years.

11. In so far as the rules regulating terms and conditions of service of civilian employees of URC issued vide letter dated 28.4.2003 (annexure R1) are concerned, para 3(a) of these rules specifically provides that these rules will not be applicable in case of person engaged and hired on contract basis

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whose conditions of service will be regulated by their appointment letter. The applicant had been engaged on contract and his services were not made permanent. Thus the terms and conditions issued by the Government vide letter dated 28.4.2003 will not be applicable in this case. Besides, according to para 5(b) of these rules, only those employees who had completed one year of probation on 4.1.2001 were to be treated as permanent employees. As the applicant was appointed only in Oct. '2000 and had not completed one year on 4.1.2001, he cannot be treated as a permanent employee in terms of the above rule. This point was vehemently opposed by the learned counsel for the applicant who stated that this provision in para 5(b) does not preclude those employees for being declared permanent who complete one year of probation after 4.1.2001. According to him in terms of these rules, the applicant is deemed to have been made permanent after completing one year of service.

12. I have heard the rival contentions of both the parties. As mentioned above, the dispute with regard to service conditions of the employees of URCs has been considered and adjudicated upon by the Hon'ble Supreme Court in the case of **Mohd. Aslam** (supra). In that case, the question raised was whether or not the employees of the URCs are government employees and could they approach the Central Administrative Tribunal for redressal of their grievances. The Apex court after considering all the relevant factors came to the conclusion that the status of the employees of URCs must be held to be that of government employees and consequently the CAT would have the jurisdiction to entertain applications from such employees under the provision of the Administrative Tribunals Act, 1985 but this itself ipso facto would not entitle them to get all the service benefits, as are available to regular government servants or even their counter-parts serving in the CSD canteen. It would necessarily depend upon the nature of duty discharged by them as well as on the rules and regulations and administrative instructions issued by the employer. According to the terms and conditions issued by the Government vide letter dated 28.4.2003, the persons engaged on daily-wages or casual basis or those hired on contractual basis are not covered





under these rules. It is disputable that applicant falls in the category of contractual employee.

13. The Unit Run Canteens have been established at the various outlets of CSD for the benefits and convenience of defence personnel as a welfare measure. With a view to help settlement and rehabilitation of those ex-servicemen or pensioners who have retired or discharged from service at the age of about 40-45 or so, prior to attaining the normal age of 60 years, such appointments in URCs have been provided. Their appointment in URCs cannot be equated with the appointment or service conditions of those who are appointed or engaged in a regular department at the threshold of their career on contract basis. This stark reality and distinguishing feature in the case of appointment on contractual basis of the ex-servicemen in URCs cannot be lost sight of. The ex-servicemen employees on contract basis have only limited rights and cannot claim parity with those of regular departmental employees. It is a well-settled proposition of law that conditions of service of an employee are governed by a specific set of rules. The new rules introduced vide letter dated 28.4.2003 have come into operation to deal with the service conditions of employees of URCs as mentioned above. In these rules, a specific provision has been made to exclude persons engaged on daily-wage basis or on casual employment or hired on contractual basis from the operation of these rules. Such employees are, of necessity, to be governed and their service conditions regulated with reference to the conditions contained in their appointment letters or the instructions in the form of Standing Operating Procedure (SOP). According to the new rules, the employees appointed on contract basis either before or after 4.1.2001 are not to be dealt under these rules. On this aspect of the matter, I am relying on the judgement of the Chandigarh Bench of the Tribunal dated 2.4.2004 in OA No.1219/HR/2001 and other connected OAs in the case of **Birju Singh Chauhan and Ors. vs. UOI and Ors.**

14. As mentioned above the engagement of ex-servicemen in URCs on contract basis is a welfare measure. The objective was to help them in the first few years, say 3-5 years, after retiring from the service at a



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comparatively young age of 40-45 years to settle in life. Thereafter they could seek civil employment elsewhere in private or public sector company or enter into any other profession to meet their family obligations. It was never the intention of the Government to offer them permanent posts in these URCs and allow them to superannuate at the age of 60 years. In fact if that is allowed, it will block the way of other ex-servicemen who are retiring at an age of 40-45 and who also require the same assistance after retirement to settle in life. It is, therefore, necessary that ex-servicemen are engaged for a few years in URCs and thereafter another batch of ex-servicemen is engaged to assist them in their rehabilitation, so that this process, which is a continuing one, is not blocked. In case this is not done and one set of employees is allowed to continue till the age of superannuation at 60, the very purpose of employing ex-servicemen in URCs will be defeated, as only a handful of employees will get the required assistance. What will happen to others and where they would go for help for rehabilitation! Government is required to follow a rationale policy, which they have done by issuing terms and conditions of employees in URCs by letter dated 28.4.2003. These terms and conditions do not, however, preclude certain categories of civilian employees in URCs to be employed on permanent basis. It is for the employer to decide which category of employees is to be engaged on permanent basis. Such employees would be on probation and on successful completion of probation, they could be made permanent and will retire at the age of 60. These terms and conditions would be applicable only in respect of such employees and not in respect of those who are employed on contract basis either before or after 4.1.2001. Their service conditions will have to be governed by the agreement entered into by them with the employer based on the terms and conditions in SOP.

15. I have carefully gone through the Hon'ble Supreme Court judgement cited by the learned counsel for the applicant in the case of All India Corporation (*supra*), especially para 69 of the judgement, on which much reliance has been placed. This judgement mainly pertains to abolition of contract labour and how the employees have to be treated after the abolition of this system. This judgement has no direct relevance to the case under

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consideration. In so far as the judgement in case of **Dharma Nand** (supra) is concerned, rules regulating terms and conditions of service of civilian employess in URCs issued vide letter dated 28.4.2003 were not brought to the notice of the Hon'ble Supreme Court at the time of adjudication. This judgement is thus per incuriam and cannot be made applicable in the instant case. As regards this Tribunal's judgement in case of **Kewal Singh** (supra), the OA in this case was allowed vide order dated 2.5.2003 mainly on the ground that the terms and condition under which the services of the applicant were terminated were found to be not in conformity with the Apex Court's decision. The new terms and conditions governing the service conditions of civilian employees in URCs were issued on 28.4.2003 and these were not placed before the Tribunal at the time of pronouncement of the order dated 2.5.2003 and as such the decision arrived at in that case cannot be made applicable in the present case, under consideration.

16. From the facts and circumstances of the instant case, it is evident that the applicant was appointed on contract basis and the period of his engagement was extended from time to time. He was not conferred the status of a permanent employee ever. This is a case of an ex-serviceman who was accommodated to work in the URC for a limited period after having drawn the pensionary and other benefits from the service rendered by him as a uniformed officer. He does not acquire any right more than what flows from his appointment letter and the provisions made in the SOP to which he has undertaken to abide by. According to para 47 of the SOP, he cannot be employed for more than 3 years under any circumstances. This three years period came to an end in Oct.'2003. His services were to terminate in May, 2004, according to the letter issued to him on 20.2.2004 (Annexure B). The new terms and conditions dated 28.4.2003 are not applicable in his case, as explained above. After taking into consideration all the relevant facts and provisions of the rules applicable in his case, I do not find any illegality committed by the respondents in issuing him appointment letter dated 20.2.2004 for a period of three months, after which his services were deemed to have been terminated.



17. In view of the foregoing, I do not find any merit in the OA and the same is accordingly dismissed. Needless to mention that the interim stay granted by the Tribunal vide order dated 18.3.2004 stands vacated automatically. No costs.

S.K. Malhotra
(S.K. Malhotra)
Member (A)

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