

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 31st day of August, 2001.

CORAM :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Orginal Application No. 338 of 1996

Vijay Kumar Dixit S/o Sri N.B. Dixit  
a/a 20 years. C/o A.F. Canteen, Bamrauli, Allahabad.

.....Applicant

Counsel for the applicant :- Sri H.S. Kulshrestha

V E R S U S

1. Union of India through the Air Officer Commanding  
A.F. Station, Bamrauli, Allahabad.
2. Chief Administrator Officer, A.F. Station,  
Bamrauli, Allahabad.
3. Sqn. Ldr. A. Sharma, Officer-in-Charge,  
Air Force Canteen, Bamrauli, Allahabad.

.....Respondents

Counsel for the respondents :- Sri Vikram Gulati

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the  
Administrative Tribunals Act, 1985, applicant has  
challanged the order dated 19.02.1996 (annexure-4) by  
which services of the applicant were terminated w.e.f  
21.03.1996 by a month notice as per Rule-23 of Terms and  
Conditions of Service of Canteen Employees.



2. Sri H.S. Kulshrestha, learned counsel for the applicant has submitted that the termination of services of the applicant is ~~based~~ on specific charges and services could not be terminated without holding ful-fledged enquiry after giving reasonable opportunity of hearing to the applicant. For this purpose, reliance has been placed on the show cause notice dated 04.02.1996 (annexure-2). Learned counsel has submitted that the order of termination is illegal and without authority. It is also submitted that the Rule-23 is illegal and arbitrary as it gives absolute power to appointing authority to terminate the services of any employee without assigning any reason. Learned counsel has submitted that such an arbitrary power is violative of Article 14 and 16 of Constitution of India and is liable to be quashed as Rule-23 is ultravirous.

3. On behalf of the respondents, CA has been filed in which it has been alleged that a canteen is not instrumentality of the state as contemplated under article 12 of the Constitution of India. The canteen is not the creation of any statute, act or legislation. The conditions of service of the employees are governed by the standing orders issued by the canteen from time to time. The Ministry of Defence does not exercise control over the canteen or its employees. Moreover, the canteen is not funded from the public fund. It is stated that the O.A is not legally maintainable. It is also stated that under Rule-4 (Period of Probation) is for six months, which in appropriate cases, may be extended to one year. On completion of ~~stipulated~~ period of probation, an employee may be confirmed in his appointment by issuing a letter of confirmation, if his work as well as conduct has been considered satisfactory. Mere completion of probation period shall not amount to automatic confirmation.



Employees, who have completed one year probation period but have not been confirmed would still be deemed to be on probation and for this, order in written is to be issued by appointing authority. It is submitted that as the applicant was on probation, he can be removed from service by simple notice.

4. We have carefully considered the submissions of the learned counsel for the applicant and also the case set-up in the counter affidavit. Hon'ble Supreme Court in case of Union of India and others Vs. M. Aslam and others, 2001, LAB.I.C, 488 has clearly held that the employees in Unit Run Canteens are government employees and Central Administrative Tribunal retains jurisdiction to entertain their applications treating them as government employees. After the judgement of Hon'ble Supreme Court in the aforesaid case, there remains no doubt that the employees of Unit Run Canteen are civil servant and the applications filed by them may be entertained by this Tribunal.

5. The second related question is as to whether the impugned order of termination dated 19.02.1996 is legal and can be sustained. Applicant was appointed as Pickup Boy in Air Force Canteen vide appointment letter dated 01.12.1993. He completed period of probation of six months. It is not the case of respondents that period of probation was extended at any time. In case of termination from the service, legal position is not very different in case of regular/confirmed employees and temporary employees, if it is on the basis of mis-conduct of the employee. Thus, facts and circumstances have to be seen whether the allegations against the applicant are <sup>based</sup> verified for passing the order of termination or they



Employees, who have completed one year probation period but have not been confirmed would still be deemed to be on probation and for this, order in written is to be issued by appointing authority. It is submitted that as the applicant was on probation, he can be removed from service by simple notice.

4. We have carefully considered the submissions of the learned counsel for the applicant and also the case set-up in the counter affidavit. Hon'ble Supreme Court in case of Union of India and others Vs. M. Aslam and others, 2001, LAB.I.C, 488 has clearly held that the employees in Unit Run Canteens are government employees and Central Administrative Tribunal retains jurisdiction to entertain their applications treating them as government employees. After the judgement of Hon'ble Supreme Court in the aforesaid case, there remains no doubt that the employees of Unit Run Canteen are civil servant and the applications filed by them may be entertained by this Tribunal.

5. The second related question is as to whether the impugned order of termination dated 19.02.1996 is legal and can be sustained. Applicant was appointed as Pickup Boy in Air Force Canteen vide appointment letter dated 01.12.1993. He completed period of probation of six months. It is not the case of respondents that period of probation was extended at any time. In case of termination from the service, legal position is not very different in case of regular/confirmed employees and temporary employees, if it is on the basis of mis-conduct of the employee. Thus, facts and circumstances have to be seen whether the allegations against the applicant are <sup>based</sup> verified for passing the order of termination or they



were only motive for passing the order. It is not disputed that the allegations against the applicant were that he, ~~was~~ while on duty at counter, indulged in irrelevant gossiping with customers and also misbehaved with the sales staff and was insincere to the activities of the canteen. These allegations were made against the applicant in show cause notice dated 04.02.1996. All the allegations are vague and uncertain and did not contain facts so as to give any reply. The order of termination has been passed on these allegations with simple notice. From the facts and circumstances, it is clear that the allegations were foundation for passing the impugned order of termination. The applicant had already served on the post for more than two years. Nothing <sup>is</sup> on record to show that before show cause notice dated 04.02.1996, there was any complaint of misconduct and insincerity against the applicant.

6. The applicant in his reply dated 08.02.1996 stated that he did not indulge in over talking with any body. On counter, he had been replying to the questions of the customers and he had not given more than two-three minutes time to any customer<sup>s</sup>. He also stated that he was never given show cause notice by the Officer-in-Charge. It was first notice to him. He has also stated that canteen staff has no complaint against him. Then he pleaded for justice. In view of this reply, if the respondents were not satisfied, an enquiry was necessary to establish the charges against the applicant, justice in the present case has not been done. He has been terminated from the service on vague and un-verified allegations. In our opinion, the impugned order can not be sustained. For the

*L* *—* *d*

reasons stated above, this O.A is allowed. The impugned order dated 19.02.1996 (annexure- 4) is quashed. The applicant shall be re-instated on the post with continuity in service and other benefits. However, he shall be entitled only for 50% of back wages. The amount due to the applicant shall be paid within four months from the date a copy of this order is filed.

7. There will be no order as to costs.

  
Member- A.

  
Vice-Chairman.

Dt.31.08.2001

/Anand/