

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 12th DAY OF JULY, 1996

Original Application No. 450 of 1996

HON.MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

Sunil Kumar Rawat, son of late
Sri Laxman Prasad Rawat, Salesman
in Air Force Canteen, Bamrauli
resident of village Naini, Allahabad.

Applicant

BY ADVOCATE SHRI A.K. GAUR

Versus

1. Union of India through Chief of
Air Staff, Air Head Quarter
New Delhi.
2. Air Officer Commanding, 29 Wing
Air Force Station, Bamrauli, Alld.
3. Sqn Ldr. A. Sharma, Officer Incharge
Air Force Canteen, Bamrauli, Alld.

Respondent

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

The applicant was appointed as Pick Up Boy w.e.f. 16th August, 1984 in the Air Force Canteen, Bamrauli. He was promoted as Salesman w.e.f. 1st November, 1990 and was also confirmed and granted permanent status by means of Annexure 4. The applicant's services were terminated by order dated 19.2.96 which has been challenged and its quashing have been sought. The applicant has also sought a declaration that Rule 23 and 24 of the terms and conditions of the services of the canteen be declared to be ultravires of Art. 14 and 311 of the Constitution of India.

2. The Respondents have filed a detailed counter

affidavit. A preliminary objection with regard to the maintainability of the OA before the Tribunal has been raised. The respondents plead that the applicant is neither an employee of the Union Government nor is he a Defence employee nor does he hold a civil post. This objection has been raised in the context of the provisions of Section 14 of the Administrative Tribunals Act, 1985. The three sub-clauses of Sub-section (1) of Section 14 of the Act enumerate the category of grievances of employees over whom this Tribunal can exercise jurisdiction in dealing with their service complaints.. The three sub-clauses are quoted below for ready reference.

- (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 an All India Service or a person referred to in clause (c)) appointed to any civil service of 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 person with the affairs of the Union concerning a person 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.3.

3. The applicant in the OA has not specified under which of the said provisions he can be said to fall. Even in the rejoinder affidavit the applicant has not indicated under which clause of Section 14 he would fall.

4. The first and foremost question which calls for our adjudication is whether the applicant can be held to be a member of the central service or that he holds a civil post under the Union of India. Only in the event of the finding ^{on} ~~that~~ ^{.in} this question being the affirmative the other questions ~~is~~ to challenge the order of termination will arise for consideration. On the other hand, if the finding is in the negative the OA will not be cognizable by the Tribunal nor any relief can be granted to the applicant by us.

5. The applicant in his OA has stated that the Indian Air Force Establishment organises, controls, finances Air Force canteen all over the Air Force Units. His case is that canteen facility is one of the super perk

indicated in the advertisement issued for recruitment of candidates for the Air Force services. It is further pleaded that with a view to regulate the civilian employees of canteen Air Head Quarters Director of Organisation has framed terms and conditions of service of canteen employees which are directed to be strictly complied with by all subordinate formations. However, the applicant also states that these rules are not statutory.

6. The applicant besides the above averment has not stated anything further nor specifically indicated as to how he claims to be a central government employee. As a matter of fact the pleadings of the applicant go to show that he has presumed that the Air Force canteen Bamrauli, where he was engaged, is a government canteen and its employee should be deemed to be the employees of the Union of India. This presumption needs to be examined.

7. In the counter affidavit, the respondents in support of their preliminary objection, as regards the maintainability of the OA before the Tribunal, have indicated certain other facts and circumstances. Their case is that the Air Force canteen provides eatables and other consumer commodities to the defence personnel. This canteen is run and maintained from non public funds. For this they rely on Rule 1 of the terms and conditions of service of canteen employees, which has been filed as Annexure 1 to Compilation II. The said rules are called - "the rules regulating the terms and conditions of service of civilian employees of Air Force canteen Bamrauli paid out of non public funds"

In the counter affidavit it has further been clarified that non public funds consists of donation as well as

from the profits earned by the canteen from time to time. It has further been indicated in the counter affidavit that the Management and accounting on non public funds is done in pursuance of instructions issued by Air Marshal dated 2nd December, 1991 contained in the Manual of Management and Accounting on non-public funds.

8. The respondents in their counter affidavit have further stated that the Indian Air Force Air Head Quarters neither controls nor finances Air Force canteens in the Air Force units. These canteens according to the respondents, are in fact, set up under the sanction of Formation Commanders who may sanction the opening of Unit run canteens. The salaries of the employees of the canteen it is stated, are paid out of salary account of the canteen i.e. from the profits earned by the canteen. Their further stand is that the canteen is run as a trust with the officers of the local Air Force station as ex-officio members of the trust for the welfare of the personnel.

9. The respondents have further indicated that Auditing of the accounts of the respondents canteen is done through a private civilian Auditor, unlike the accounts of Armed Forces and other Defence Departments which are audited by the CDA. The respondents have also indicated that the respondents canteen pays regular rent for the premises of the canteens to the MES and also pays water, electricity and telephone and other charges like any other private body.

10. The applicant in his rejoinder affidavit disputes the contention of the respondents that he was not an employee of the Union government and was neither appointed by the Union government and therefore he cannot claim to be a central government employee. In

para 6 of the rejoinder affidavit the applicant has chosen to indicate " the principles of law emerging from decided cases". We find that the same is a mere paraphrasing of the points which have been indicated in para 27 by the Hon'ble Supreme court in Parimal Chandra Raha Vs. Life Insurance Corporation of India reported in J.T. 1995(3) S.C. 288 wherein the law has been summarised.

11. From what has been indicated hereinabove, it would be evident that the pleadings of the applicant are wholly insufficient to enable us to hold on the basis of the pleadings that the applicant can be said to be a central government employee or a holder of a civil post under the union of India. The applicant ~~has~~ also not tried to improve upon his pleadings in the rejoinder to meet the preliminary objection raised by the respondents and to give reply to the facts averred to in the counter to support the preliminary objection.

12. The learned counsel for the applicant at the hearing however, cited two decisions before us.

- (i) M. Aslam and Ors Vs. union of India and Ors
1996 All India Services Law Journal(CAT)
page 351.

This is a decision by a learned Single Member of the Jodhpur Bench of the Tribunal.

- (ii) Rajendra Jagarwal and Ors vs. Union of India
and Ors OA. No. 157/93 and TA 338/94
decided by a Division Bench of the
Jodhpur Bench of the Tribunal on 17.2.96.

A copy of the said judgment has been furnished to us. Both the cases pertained to unit run canteens of the Air Force.

12. The first case M. Aslam and Ors has been decided by a Single Member of the Jodhpur Bench of the Tribunal. In this case a preliminary objection as raised in the present OA by the respondents appears to have been raised and considered. A perusal of the said decision shows that the said learned Single Member has drawn support for the view taken by him from a Division Bench decision of Bombay Bench in Chhotey Lal Babu Lal Kanaujia and Ors vs. Union of India and Ors OA 454/94 decided on 9.2.94. The learned Single Member who decided M.Aslam and Ors case constituted the bench at Bombay since he was posted there which decided the case of Chhotey Lal Babu Lal Kanaujia and others. In Chhotey Lal Babu Lal Kanaujia's case the applicants were dhobis who were paid out of regimental funds and for that reason were held to be holders of civil post. We do not have the benefit of going through the said decision in Chhotey Lal Babu Lal Kanaujia's case since copy of the decision has not been made available nor it appears to have been reported in any journal. Be that as it may. Since the view taken in the said judgment as disclosed in the two decisions cited by the learned counsels for the applicant may be dealt with. in M. Aslam's case while dealing with the preliminary objection one of the point that was considered was whether the canteen fund is a non government fund totally generated by itself. In para 16 it was observed:

" Apart from making a blank statement that Unit Run Canteen funds are non Govt. fund, there has been no attempt to substantiate the statement."

It would be evident from para 16 that therein the applicants have indicated that the CSD gave a subsidy of seven lacs in the shape of quantity discount. It was

also noted that the learned counsel for the respondents did not controvert this. Accordingly the learned Single Member proceeded to take the view that the CSD is a separate department of the Govt. of India fully funded by the consolidated fund of India and its employees are regular employees of the Government and proceeded to conclude" if that is so, any subsidy from the CSD to URCs would controvert the statement that the entire canteen fund is a non government fund. "

The learned Single Member further noted that "while it had been stated that no public fund has been used for running canteen, no firm statement had been made anywhere that there has been no funding from other sources like the regimental fund, Army Welfare fund etc which are funded by the Government fund."

13. What we have indicated hereinabove is only to highlight the point which prevailed with the learned Single Member who decided M. Aslam's case. We may not be understood to have made any comments. Any decision in a given case is to be based on the pleadings of the parties. The facts proved the circumstances~~xx~~ highlighted etc. A decision cannot be given in a vaccum. In the case in hand, the pleadings by the applicant is wholly perfunctory and cryptic.

14. The other decision of the Jaipur Bench is almost on identical lines as the decision in the first case. A perusal of the same would show that the conclusions have been arrived at on the basis of certain specific facts pleaded in the said case. The conclusions also go to show that the defence set up had not been substantiated by the documents filed by the respondents.

15. In the case in hand besides the detailed averment made in the counter affidavit the respondents have also placed for our consideration the Balance Sheets, the Audit Reports by the private Chartered Accountant as also the file containing rent for the premises and furnitures of the canteen. The learned counsel for the respondents has taken us through the decision of the Division Bench in Rajendra Jagarwal's case to highlight the circumstances which persuaded the said Division Bench to take the view it did that the URCs are in non **statutory** departmental canteens of the Union of India and fully covered by the Supreme Court decision in M.M.R Khan Vs Union of India and Ors as also Parimal Chandra Raha Vs. Life Insurance Coporation of India. With due regard to the learned Members who decided Rajendra Jagarwal's case we wish to point out the crux of the decision in Parimal Chandra Raha Vs. LIC of India **is** ~~the finding of fact/quoted in Paragraph 29.~~ **recorded** In the said paragraph the facts in the case were being analysed in the light of the propositions of law stated to be emerging from the statutory law and the judicial decisions as indicated in Paragraph 27 ~~xxxxxx~~ **xxxxxx** and it was observed;

"There is no dispute that the respondent-Corporation has not explicitly undertaken to provide canteen services to its employees working in the offices in question. The only obligation that it had explicitly accepted was to provide to the employees facilities to run canteen, such as premises, furniture, electricity water etc. However, the facts on record show that the Corporation had implicitly accepted the obligation to provide **1 Bd**

canteen services and not merely the facilities to run the canteen."

In the case in hand, as indicated hereinabove, there is no averment of facts what so ever in the OA or even in the rejoinder affidavit which may lead us to analyse whether the principles of law indicated in paragraph 27 by the Hon'ble Supreme Court in parimal Chandra Raha Vs. LIC of India can be said to have been proved to exist.

16. The record produced by the learned counsel for the respondents goes to show that the canteen in question has been ^{paying} ~~paid~~ monthly rent for the premises in which the canteen was located as also electricity, water and telephone charges. ^{for the last so many years.} The Balance Sheets and the Audit Reports substantiates the said averment.

17. The learned counsel for the respondents invited our attention to a decision of the Hon'ble Supreme Court reported in J.T. 1996(3) S.C 226 Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen. It was an appeal against the award of the Central Government Industrial Tribunal at Bombay. The canteen employees claimed that they are employees of the Reserve Bank of India. The Industrial Tribunal in its award had held that the Workmen employed in various canteens of the Reserve Bank of India fall within the ratio laid down by the Hon'ble Supreme Court in M.M.R. Khan Vs. Union of India and Ors 1990(Supp) SCC 191. The Hon'ble Supreme Court held that the Tribunal has misled and misunderstood the decision in MMR Khan's case and has **misappreciated** the ratio laid down in the said decision. After a detailed analysis of the decision in MMR Khan's case the Supreme Court referred to the observation in Parimal Chandra Raha's case and para 26 of MMR Khan's case in respect of non statutory

recognised canteens was decided on the facts of the case including the provisions of the Railway Establishment Manual and Notifications and circulars issued by the Railway Board from time to time and other documents and observed in paragraph 21 that:

"In our opinion the said reasoning and conclusion of this court in MMR Khan's case rested on its own facts."

The Hon'ble Supreme Court in para 24 examined the reasons which persuaded the Industrial Tribunal to hold that the said case was within the ratio laid down in MMR Khan's case. It was noted that the Tribunal held that the case falls within the ratio of the decision in MMR Khan's case since the Bank exercises 'remote control' which is as effective as any and in the end of para 24 concluded " we are of the view that in the absence of any obligation statutory or otherwise regarding the running of a canteen by the Bank and the details relating thereto similar to Factories Act or the Railway establishment Manual, and in the absence of any effective or direct control in the Bank to supervise and control the work done by various persons, the workers in the canteen run by the implementation Committee(Canteen Committee) cannot come within the ratio laid down by this Court in M.M.R. Khan's case."

18. The learned counsel for the respondents also cited before us the following four decisions.

- (i) Decision of a Division bench of this Bench of the Tribunal in OA 213/88 R.D. Shukla and 5 Others Vs. Union of India and Ors.

The said decision was rendered on 28.4.89. The applicants were working in Red Eagle Canteen which was constituted for canteen services to the troops of

headquarters 4 Mountain Division, now 4 Infantry Division . The REC was shown to have been registered with the Canteen Stores Department in accordance with the provisions contained in Canteen service Manual, 1978. It was also shown that the formation run canteen there also the question that came up for consideration was whether the applicants were members of the Central civil services or they hold civil post under the Union of India. There the dispute also rested on a question whether the canteen employees were paid from the canteen fund or regimental fund, private fund or a public fund. It ~~was~~ noted that the parties have not produced sufficient material throwing light in the nature of public fund or regimental fund. However, it preferred to an earlier decision in OA No. 524 of 1986 Smt. Shakuntala Chopra Vs. union of India decided on 7.11.1986 where the said Bench had the occasion to examine a similar question and had placed reliance on para 801 of Defence Service Regulations which defines these terms as follows:

Public Funds- Include all funds which are financed entirely from public money the unexpended balances of which are refundable to Government in the event of not being devoted to the objects for which granted, and also

- (i) Un issued pay and allowances;
- (ii) office allowance fund; and
- (iii) the estates of deceased men and deserters

Regimental Funds- Comprise all funds, other than public funds as defined above, maintained by a Unit."

19. Reliance in Smt. Shakuntala Chopra's case, as this judgment shows, was further placed on para 820 of the said Regulations which provides that the Officer Commanding whose position in relation to regimental funds is that of trustee for the personnel of his unit, is responsible that these funds are properly applied, with special reference to the object of each, for the benefit of the personnel or unit as a whole or in certain cases, for the benefit of subscribers to the funds, when he will be personally responsible for any portion of the funds which may be misapplied or lost owing to neglect on his part. On the basis of these two provisions in Shakuntala Chopra's case it was held that regimental fund is not a public fund though it remains under the control of the Officer Commanding and his position is that of a trustee only so far as this fund is concerned. The Division Bench further noted ~~that~~ in the said case the Canteen Regulations 1974 which allow credit facilities to the Canteen of REC had been analysed and it was held that these Regulations clearly go to show that the retail canteens of REC are ~~are~~ private canteens run by civil private employees appointed by the Management Committee of the REC and their employees are paid from canteen fund or regimental fund and they are not Govt. servants. The Division Bench which decided R.D. Shukla's case further examined the question whether the applicant before them hold a civil post or not. After referring to the decision in G.M. Quadri Vs. Secretary to Govt. (A.I.R. 1959 J & K-26) and a Full Bench decision in Narinder Gupta Vs. Union of India (A.T.R. 1986 (2) CAT-212) and several other cases that the employees of the REC were not employees of the central government and they do not hold any civil post

under the Union of India. We are in respectful agreement with the proposition of law laid down by the Division Bench in R.D. Shukla's case(Supra).

- (2) Amar Nath Chaddha Vs. Union of India and Ors
(1991) 15 A.T.C 507.

This decision is by a Division Bench of this Bench of the Tribunal and related to the employees of Unit canteen No.4, Wing Air Force Station, Agra. The decision in R.D. Shukla's case(Supra) was referred to and was followed.

- (3) Ashok Kumar Vs. Chairman, through Union of India, Ministry of Defence, Board of Administration and General Manager, Canteen Stores Department, O.A. No. 703/94 decided on 8.5.95 by a Division Bench presided by me.

The applicant in the said case was an employee of the Pine Canteen, H.Qr Infantry Division. Pine Canteen was a Unit canteen and identical pleas are taken in the present counter affidavit has also been taken and a preliminary objection has been raised in the present case had also been raised and considered. In this decision the Bench had agreed with the reason given in R.D. Shukla's case.

- (4) R. Radhakrishnan Vs. Chief of Naval Staff and Others (1992) 20 A.T.C. 332

This is a decision by a Division Bench of the Ernakulam Bench of the CAT. The applicant therein was working under an Organisation of Indian Naval Canteen which is maintained by a Control Board constituted by the Chief of Naval Staff. The question therein by way of preliminary objection was whether the Tribunal had jurisdiction to deal with such a matter. The Indian

Naval Canteen Board is working as a trust for carrying out the objects envisaged in the memorandum constituting the Board. We are in respectful agreement with the view taken in the said decision.

20. It would be instructive to refer to a recent decision of the hon'ble Supreme Court in Union of India(Railway Board and Ors) Vs. J.V. Subhaiah and Ors. Reported in (1996) 33 A.T.C 194. There respondents, employed ~~in service~~ appointed by the Railway Co-operative Stores/Societies had claimed parity with Railway servants under Para 10-B of the Indian Railway establishment Code in the matter of status, promotion, scales of pay, increments etc. The hon'ble Supreme Court in the said case referred to the definition of "Railway Servant" in Para 10-B of the Indian Railway Establishment Code where the said term had been defined to mean " a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a post in the Railway Board" and held that in other words, a person must be appointed to a service or a holder of a post under the administrative control of the railway Board including a post in the Railway Board itself. There the respondents had admitted that they are not members of the service nor do they hold any post under the administrative control of the Railway Board, but had sought parity on the basis of the Rule laid down in M.M.R Khan's case. In para 18 their Lordships considered the plea that subsidy was given by the Railway Administration and thus it should be considered as a controlling factor and Societies/Stores as an intervening agency or veil between the railway Administration and the employees. It observed:

1
Boh

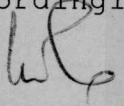
"the same principle would equally be extendible to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate state/Central Government to claim the status of government employees. Equally, other employees appointed in other Cooperative Stores/Societies organised by appropriate Government would also be entitled to the same status as government servants. Appointment to post or an office under the state is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified. Any appointment otherwise would be vertical trans-plantation into service dehors the rules. Appointment through those institutions becomes gateway for back-door entry into government service and would be contrary to the prescribed qualifications and other conditions and recruitment by Public Service Commission or appropriate agencies"

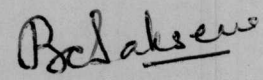
The claim by the respondents was negative^d. In the same caseⁱⁿ Para 13 reference was made to another decision of the Hon'ble Supreme Court in All india Railway Institute

Boch

Employees Association Vs. Union of India through the Chairman, 1990 SCC(L&S) 323. In the said case the question was whether the employees appointed in the institutes or clubs maintained by the Railway employees as a welfare measure could be treated as Railway employees on a par with Railway Canteen employees (statutory or non statutory recognised canteens). The court held that the establishment of the institutes or clubs, though recognised by the Railway, was only a welfare measure, ^{and} had held that formation of the institutes or clubs was not mandatory. They are established as a part of the welfare measure for the Railway staff and the kind of activities they conduct, depends, among other things, on the funds available to them. It was held that ^{if} the employees working in the institutes or clubs are recognised as a Railway employees it will have snowballing effect on other welfare activities carried out by the Railway and similar activities carried "on by all other organisations".

21. In view of the discussion hereinabove, we are unable to hold that the applicant has proved ^{himself} to be a civilian appointed to any defence services or a post connected with defence. On an application of the principles laid down in the various decisions referred to hereinabove we are not persuaded to hold that the Air Force Canteen Bamrauli which is clearly shown to be run and maintained from non public fund have the status of a non statutory recognised canteen. The O.A. is clearly not maintainable before this Tribunal. It is accordingly dismissed. Parties to bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: July..., 1996
Uv/