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Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 568 of 1997

Allahabad this the 13th day of February, 2002

Hon'ble Mr.Rafiquddin, Member (J)
Hon'ble Mr.C.S. Chadha, Member (A)

R.C.TRIPATHI (Retd.) a/a 53 years, Son of Sri Awadh Narain Tripathi, Resident of village and P.O. Sohgaura District Gorakhpur.

Applicant

By Advocate Shri Sudhir Agarwal

Versus

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Commandant, 39 Gorakha Training Centre, Varanasi Cantt.
3. Col.S.S. Rawat, Officiating Deputy Commandant Nigrani Adhikari, 39-Gorkha Training Centre, Varanasi Cantt.
4. The Canteen Officer, Run it & Run Canteen, 39-Gorkha Training Centre, Varanasi Cantt.
5. Deputy Director General Canteen Services Quarter Master General Branch Army Headquarters, Police Head-quarter, New Delhi.

Respondents

By Advocate Shri Ashok Mohiley
Shri Amit Sthalekar

O R D E R (Oral)

By Hon'ble Mr.Rafiquddin, Member (J)

This O.A. has been filed by the applicant

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seeking declaration to the effect that his services on the post of Canteen Manager and his oral termination by the respondents on the said post w.e.f. 16/18-5-97 is illegal and violative of article 14 and 16 of the Constitution of India, and also seeking direction to the respondents to provide the benefits in the matter of pay scale etc. to the applicant as are admissible to the other Central Government employees holding similar post and to extend the benefit granted by the order dated 07.02.96 passed in O.A.No.157 of 1993 *Rajendra Jagerwal Vs.U.O.I. & Ors* decided by Jodhpur Bench of the tribunal.

2. The case of the applicant is that the Ministry of Defence, Government of India in order to provide daily use commodities at reasonable price to employees under the Defence Ministry undertakes to run a Canteen Stores Department (for short C.S.D.) which provides canteen services to the various incumbents under defence services/establishment/installations and their families. It is further stated that for the purposes of administration, the C.S.D. comprises of the following;

(a) Canteen Services Board of Control.

(b) Executive Committee of the Board of Control

(c) Canteen Section as a part of Quarter Master General Branch Army Headquarters.

(d) Canteen Stores Department.

It is further stated that the Canteen Services Board of Control consists of the Defence Minister as Chairman, Defence Secretary, Financial Advisor, Ministry

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of Finance(defence), Quarter Master General, Chief of Personnel Naval Headquarters, Air Officer Incharge Administration Air Headquarters(all as members) and the Chief Canteen Officer Q & Gs Branch Army Headquarters(Security). The C.S.D. purchases the general commodities and maintains its whole sale depots with the approval of the Board of Control. It is stated that for the purposes of supply of various commodities in retail the different departments of the Ministry of Defence Services are permitted to operate canteens named as Unit Run Canteen(U.R.C.in short).

3. According to the applicant he was initially appointed as a Clerk in the Army in the year 1963 and retired from active service w.e.f. 01.09.1991. The applicant claims that a~~xx~~ post of Canteen Manager in Unit Run Canteen at 39, Gorkha Training Centre, Varanasi Cantt. was lying vacant. The applicant submits an application dated 23.09.91 for his employment as Canteen Manager. After considering the applicant's application, the Commandant, 39 Gorkha Training Centre, Varanasi Cantt.-respondent no.2 issued appointment letter dated 14.09.91 to the applicant appointing him on the post of Canteen Manager. According to the applicant that although the initial period of appointment as mentioned in the appointment letter was one year, but after expiry of one year period his services were extended and he worked continuously on the post of Canteen Manager almost about six years. Some of the staff members of the Canteen filed an O.A.No.157/93 before the Jodhpur Bench of this...pg.4/-

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Tribunal seeking declaration to declare them Central Government employee, which was allowed and it was declared that the staff of Unit Run Canteen should be treated as a Government servant. The applicant also submitted a representation before the respondents on 03.04.97 requesting the respondent no.2 to extend the benefit of the order passed by the Jodhpur Bench of the Tribunal. The grievance of the applicant is that instead of considering his request for extending the benefit of Jodhpur Bench's order, the respondents issued an order dated 15.5.97 refunding security deposited by the applicant and paid salary to the applicant upto 15.5.97 without disclosing any reason therefor. The applicant thereafter immediately submitted a representation dated 15.5.97 inquiring about the reasons on which such action on the part of the respondents has taken, but they failed to communicate any reason to the applicant. Thereafter the applicant was not allowed to work as a Canteen Manager. The applicant again submitted a representation on 18.05.97 (annexure A-3). Hence he had filed this O.A. seeking aforesaid reliefs.

4. The applicant has challenged the action of the respondents stating that the oral termination order of the applicant is arbitrary, illegal and discriminatory and in violation of principle of natural justice.

5. We have heard the counsel for the parties and perused the record.

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6. The main point for consideration in the case in hand is whether the applicant is entitled for the benefits of the order passed by Jodhpur Bench of the Tribunal in O.A. No.157 of 1993 referred to above.

7. Learned counsel has brought to our notice the decision of the Apex Court in U.O.I. Vs. Mohd. Aslam and Others 2001 S.C.C.(L&S) 302, decided on 04.01.2001. This decision arising out of the appeal filed by the Union of India inter-alia against the order dated 07.02.96 passed by the Jodhpur Bench in Jagarwal's case. The Apex Court after considering various cases has held as under:-

"In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-run Canteens must be held to be that of a government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions of the Administrative Tribunal Act. Civil Appeal Nos.1039-40 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Bench in O.A.No.86 of 1995 accordingly stand dismissed.

We have come to the conclusion about the status of the employees serving in the Unit-run Canteens to be that of government servants, but that by itself ipso facto would not entitle them to get all the service benefits as is available to the regular government servants or even their counterparts serving in the CSD canteens. 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. We have come across a

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set of administrative instructions issued by the competent authority governing the service conditions of the employees of such Unit-run Canteens. In this view of the matter, the direction of the Tribunal that the employees of the Unit-run Canteens should be given all the benefits including the retiral benefits of regular government servants cannot be sustained and we accordingly, set aside that part of the direction. We, however, hold that these employees of the Unit-run Canteens will draw at the minimum (sic of) the regular scale of pay available to their counterparts in CSD and, we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit run Canteens at an early date, preferably within six months from the date of this Judgment."

8. We find in the present case that the applicant was admittedly employed in a Unit-run Canteen, therefore, the principle laid down by the Hon'ble Apex Court in the aforesaid case are fully applicable in the matter of the present applicant. Consequently he is entitled for all the benefits granted to similarly situated persons by the Apex Court.

9. It is also brought to our notice that the Apex Court vide order dated 29.10.01 passed in various contempt petitions in Civil Appeal No.1039-40 of 1999 and other connected matters All India Defence Canteen Empl. UN & ANR. Vs. YOGENDRA NARAIAN & ORS has held that " The relevant policy that has been that evolved pursuant to the direction of this Court be placed on record with an affidavit. According to

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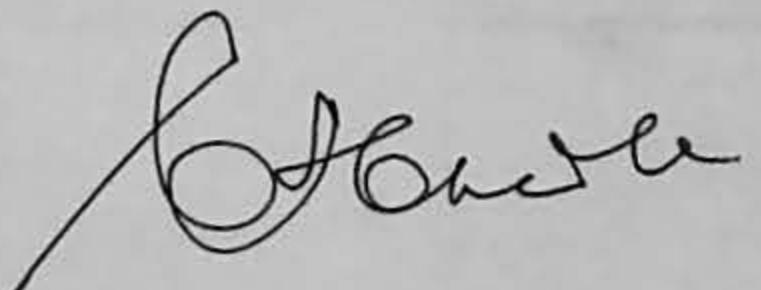
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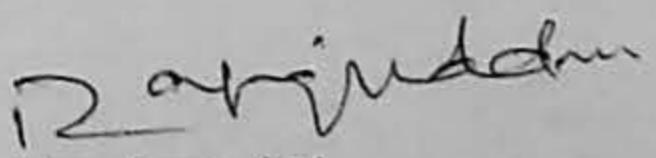
learned ASG the policy takes care of full implementation of the direction given by this Court, and even in cases where prior to the policy and subsequent to the order of this Court, some of the employees' services stood terminated, these orders have been recalled and all of them are to be treated in accordance with policy excepting those who have reached their age of superannuation."

It is also pertinent to mention that Apex Court vide order dated 17.09.01 passed in aforesaid Civil Appeals has observed that the rules have been framed as per the statement of Solicitor General as per directions issued in M.Aslam's case. (Supra)

10. Considering the facts and circumstances of the case, we hold that the status of the applicant is that of Government employee and the applicant having continuously served as a Canteen Manager nearly six years could not have been removed from the post in the arbitrary manner, as has been done in the case. The action of the respondents in removing the applicant without following the procedure and principle of natural justice, is arbitrary and unreasonable. Consequently, we allow the O.A. and direct the respondents to treat the applicant as Government employee. The applicant will be treated in service on the post of Canteen Manager from 16-05-1997 and is also entitled for all consequential benefits as per rules. There shall be no order as to costs.



Member (A)



Member (J)