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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A./T.A. /CCA No. 361/2002

Date of decision _____

Capt. J. R. Mathuria _____ Applicant(s)

Shri Rakesh Bahadur _____ Counsel for the applicant(s)

Versus.

UOI & Ors. _____ Respondents(S)

Sri B. K. Chaturvedi _____ counsel for the respondent(s)

CORAM

Hon'ble Mr. Sanjeev Kausik _____ V.C./Member(J)

Hon'ble Ms. Jayati Chandra _____ Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?


SIGNATURE

(RESERVED ON 13.12.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

Allahabad, this the 21st day of December, 2012

Hon'ble Mr. Sanjeev Kaushik, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Original Application No.361 of 2001
(U/s 19 of Administrative Tribunal Act, 1985)

Capt. T.R. Mathuria (Retired), Son of late Shri Jhandu Singh Mathuria,
Resident of 63A/72 Defence Colony, Agra.

..... **Applicant.**

By Advocate : Shri Rakesh Bahadur

V E R S U S

1. The Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Administrative Commandant/Chairman Unit Run Station, CSD Canteen, Station Head Quarters, Agra Cantt.
3. Colonel P.K. Narula, Administrative Commandant, Station Head Quarters Agra.

..... **Respondents**

By Advocate : Shri B.K. Chaturvedi

ORDER

Delivered by Hon'ble Mr. Sanjeev Kaushik, Member-J

By means of present original application filed under section 19 of the Administrative Tribunal's Act, 1985 the applicant impugned his termination order dated 25.2.2001 passed by Chairman, Unit Run Station, CSD Canteen, Agra Cantt (Annexure A-1) with further prayer for issuance of direction to the respondents to permit the applicant to perform his duties and pay him salary. None appeared for the parties.

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Being the old matter of 2001, in terms of Rule 15(1) of CAT (Procedure) Rules 1987, we proceed to decide the matter on the available pleadings on record.

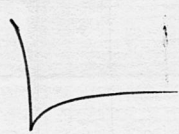
2. The facts to be noticed first. The applicant is an ex-service man who retired from Army Ordnance Corps of Indian Army on 31.8.1991. After his retirement, the applicant got himself registered at D.S.S. & A Board Agra being an ex-serviceman. On 31.8.1992, the applicant was informed by the office of D.S.S. & A Board vide their letter dated 31.8.1992 that his name has been forwarded for appointment as Manager/Assistant Manager in Station CSD Canteen Agra on 31.8.1992. The applicant was also informed by the Station Headquarter on 8.12.1992 to forward his Bio-Data and contact them on 16.12.1992. The applicant was interviewed by the Board of Officers presided by Station Commandant Agra. He was found suitable and accordingly the applicant was given appointment letter on 3.6.1993. Initially the applicant was appointed as Assistant Manager. Subsequently on retirement of Manager the applicant was promoted as officiating Manager on 1.9.1993 initially for a period of three months. Subsequently, the applicant was appointed as Manager w.e.f. 1.12.1993 vide order dated 6.12.1993. It is averred that as per appointment letter the applicant has to retire on attaining the age of 58 years which was to be completed in the year 2001. Subsequently, Standard Operating Procedure (SCP) was framed and issued by the Station Commander, Station Headquarter, Agra on 1.11.1997 wherein it was decided to review the tenure of service of canteen employees after five years and it can be

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extended till the employee attained 60 years of age. It is averred that on 24.2.2001 the applicant was called in the office of Station Headquarter and was asked to either resign else his service will be terminated. Ultimately by order dated 25.02.2001, the service of the applicant has been terminated with immediate effect. He was handed over a cheque of Rs.4,808 towards one month salary as advance, hence the original application.

3. Pursuance to notice respondents resisted the claim of the applicant by filing detailed counter affidavit. Averments made in para no.11 and 12 which are relevant reads as under:-

11. *That the allegation and insinuation as attempted in para 4.12 are completely resisted. The details of expenditure pass through the scrutiny examination, recommendation and approval of so many superior authorities under the controlling command and audit clearance. There is nothing hidden or against any approved policy or order of priorities in expenditure. The profit was distributed to minor units dependent on the canteen and Station Commanders Fund including welfare of the ex-servicemen. The amount of distribution of profit was worked out and recommended by the Canteen Manager himself (Annexure CA-2 (B)). The amount is being utilized for payment of doctors employed to look after ex-servicemen in military hospital on exclusive ex-servicemen OPD, Zila Sainik Kalyan Vidhag, to look after ex servicemen's welfare, payment of salary to Doctors looking after integrated health centers meant for separated families of soldiers serving in field areas, "ASHA" Centre for handicapped children, contribution to schools and upkeep of station, as well as maintenance of station CSD Canteen and its staff salaries. No amount of profit is spent on any luxuries whatsoever. The relevant letter is attached as CA-2(B).*



12. That in reply to para 4.13 of the application it is stated that the Board of Officers was ordered by the Administrative Commandant based on the report received by him that the refrigerator issued by CSD Depot for canteen was removed by Capt. TR Mathuria (Retired) just before Administrative Commandant made his first visit to CSD Canteen. Similarly it was reported that one Shri Kapil Saxena, employed as Chawikar was employed by Captain TR Mathur (Retired) without any authority on fictitious name. Actual name of the employee was Shri Ram Charan, who was the nephew/cousin of Capt. TR Mathuria (Retired) and employed without following proper procedure i.e. Board of Officers/Selection Committee. This was a major security risk as a canteen having property worth Rupees 80 Lakhs, is left to one Chaukidar at night and in case of any mishap during Kapil Saxena's time, it would have been virtually impossible to track him with fictitious name, father's name and wrong home address. Further as a chowkidar to the Station Canteen Shri Kapil Saxena alias Kalicharan had unauthorized access to officers. Remaining contents of para are concocted and after thought. It is further stated that the Board of Officers found and opined that Capt. TR Mathuria (Retired) was responsible for both the lapses and recommended that suitable disciplinary action be taken against him. The findings and opinion is not that of the Administrative Commandant/Chairman Col. PK Narula, VSM but of Board of Officers composed of officers from different units. Photostat copies of the relevant letter are attached as CA-3(A) and (B)."

The applicant has filed rejoinder affidavit.

4. We have gone through the entire pleadings. Admittedly, the applicant is an ex-serviceman and re-employed in a Unit Run CSD Canteen. The issue whether this Tribunal has jurisdiction to entertain the original application on the behest of applicant (who was an employee

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of Unit Run Canteen) is to be decided first, as this is preliminary issue which is to be decided first.

5. Undisputedly, the applicant and similarly situated persons working with the Unit Run Canteen are not getting the salary from the consolidated fund of Govt. of India. The judgment held in the case of Mohd. Aslam was doubted and the matter was referred to the larger Bench in case of *R. R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Ors. in Civil Appeal No.3495 of 2005* which was decided by the Lordships' of the Hon'ble Supreme Court vide their judgment dated 28.04.2009. It is held that Mohd. Aslam's (Supra) was not correctly decided, the relevant part of the judgment in the case of R. R. Pillai (Supra) reads as under:-

"1. *Doubting correctness of the view of this Court in Union of India v. Mohd. Aslam (2001 (1) SCC 720) reference has been made to a three-Judge Bench and that is how these appeals are before this Bench. The controversy lies within a very narrow compass.*

2. *The issue is as to the status of an employee of Unit Run Canteen in Armed Forces. While admitting Civil Appeal No.3495/2005 the matter was referred to a larger Bench as noted above and other cases were tagged with Civil Appeal No.3495 of 2005. We shall deal with the factual scenario in Civil Appeal No.3495 of 2005 and after deciding the legal issues involved, apply the decision to the other appeals.....*

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6. Learned counsel for the Union on the other hand submitted that Aslam's case (*supra*) proceeded on erroneous factual basis. It proceeded on the basis as if the canteen or the establishment in question was funded by the CSD. The issue is not whether it is an instrumentality of the State. Issue is whether the concerned employees are government employees. It is submitted that Union of India and Anr. v. Chote Lal (1999 (1) SCC 554) clearly applies to the facts of the case.

7. It is submitted that unit run canteen is amenable to Shops and Commercial Establishments Statutes because the appointment cannot be made dehors the Rules. There is no prescribed qualification or age limit. Similarly there is no grade or cadre. Therefore, it cannot be said that the concerned employees are holders of civil posts.

8. In the case of Aslam's case (*supra*) a Bench of this court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non- Public Funds. Further observation regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD. Additionally, in Aslam's case (*supra*) reference was made to Chandra Raba and Ors. V. Life Insurance Corporation of

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India (1995 Supp (2) SCC 611). The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.

9. The factors highlighted to distinguish Chotelal's case (*supra*) in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam's case (*supra*) and Chotelelal's case (*supra*). In our view, therefore, Aslam's case (*supra*) was not correctly decided.

10. The question whether the URC can be treated as an instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment. From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the Government employees at any stage. In Aslam's case (*supra*) CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1984 rules were operative.

11. It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants."

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6. In view of above, once the Full Bench of Hon'ble Supreme Court has already held that the employees of Unit Run Canteen are not the employees of the Central Government, and as per Section 14 of the Administrative Tribunals Act, the Tribunal can entertain the Original Application in terms of Section 19 of the Administrative Tribunals Act only the cases relating to recruitment, and matters concerning recruitment, to any All India Service or to any civil services 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. This issue has already been dealt with by this Tribunal in TA No.05 of 2011 decided on 27.4.2012 in which one of us (Member-J) was the member and author of the judgment. Relying upon the Hon'ble Supreme Court the Original Application was dismissed. Therefore, following the same ratio the present original application is dismissed as not maintainable. No Costs.

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Member-A

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Member-J

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