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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 535 of 2005

Wednesday, this the **09th** day of **April** 2008

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)

Shri A.K. Gupta, Son of Shri R.A. Gupta, Resident of House No. 135 Sadar Bazar, Barreilly Cantt. (U.P.) Pin-243001 (Employed as 'Account Clerk Canteen (CSD) the Jat Regimental Centre Barreilly (U.P.) Pin 243001.

Applicant

By Advocate Sri Vikram Sisodia

Versus

1. Union of India through the Defence Secretary, South Block, Ministry of Defence, New Delhi-110011.
2. Commandant, The Jat Regimental Centre, Barreilly (U.P.) 243001.
3. Deputy Commandant, The Jat Regimental Centre, Barreilly (U.P.) 243001.
4. Canteen Officer, (C.S.D.) The Jat Regimental Centre Bareilly (U.P.)-243001.

Respondents

By Advocate Sri Saumitra Singh

O R D E R

By A.K. Gaur, Member (J)

Through this O.A., the applicant has claimed the following main relief(s): -

- A. To issue a Writ, Order or direction in the nature of certiorari quashing the Termination letter dated 19th March 2005 issued by the Respondent No. 2, 3, and 4 (Annexure no. 8 of this O.A.)
 - B. To issue a Writ, Order or direction in the nature of Mandamus directing the Respondents to reinstate the Applicant on his Post.
2. Brief facts of the case are that the applicant was appointed in CSD Canteen as Accounts Clerk in CSD Canteen Jat Regimental
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Centre, Bareilly w.e.f. 14.10.1999. Vide letter dated 10.10.2000 the period of service of the applicant was extended for one year. It has been contended on behalf of the applicant that in view of the decision rendered by the Hon'ble Supreme Court in a Civil Appeal No. 1039-1043 of 1999 Union of India and others Vs. M. Aslam and others, the persons serving in CSD canteen will be treated as permanent Government employee and their pay and allowances shall be fixed accordingly. The applicant also demanded his permanent status but the respondents did not consider his grievance. He also demanded his arrears of pay and allowances w.e.f. 04.01.2001 but the respondents did not consider the same. With a view to wreak vengeance, the respondents made false complaint against the applicant and gave him a show cause notice dated 09.02.2005 (annexure-3), which was wholly baseless, devoid of merits and force. The show cause notice was duly replied by the applicant vide annexure-4. According to the applicant he has been made a victim of harassment in as much as that vide letter dated 07.03.2005 the respondents have changed the nature of appointment of the applicant and directed him to take over the charge of L.P.G. Outlet Centre, which according to the applicant is clearly in violation of the direction given by the Hon'ble Supreme Court in M. Aslam's case. Vide letter dated 09.03.2005 the respondents directed the applicant to apply for extension of the service in CSD Unit Run Canteen. The applicant accordingly replied vide his letter dated 15.03.2005 and apprised the Canteen Officer that the respondents are disobeying the directions given by the Hon'ble Supreme Court in M. Aslam's case and are acting in utter violation of Rules and Regulations applicable to the Unit Run Canteen employees. The request of the applicant was not acceded to by the respondents and his services were accordingly terminated vide Order dated 19.03.2005. The sole ground of challenge before this Tribunal is that the applicant has acquired permanent status of a civil servant and in view of Mohd. Aslam's case, his services should have been regularised and he should have been given pay and allowances as per Army Headquarters letter dated 28.04.2003.

3. Learned counsel for the respondents on the other hand filed reply and denied the allegations contained in the O.A. In their reply, the respondents have clearly and specifically submitted that the applicant was on probation and his appointment as Accounts Clerk was neither confirmed nor he applied for further extension of service in the year 2005-06. In spite of written advice by the competent authority, he did not apply for extension of service of his present appointment. The termination of



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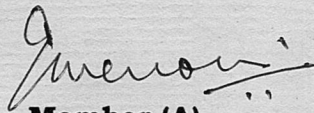
service as Accounts Clerk, CSD Canteen, Jat Regimental Centre is absolutely in order. It is submitted by the respondents that the applicant did not put forth any specific reason and explanation for unauthorized possession of 24 bottles of Iodex in his reply dated 28.02.2005 to the show cause notice. The applicant was also directed to take over the charge of Sale Attendant in SP Gas Agency, which he declined. Further case of the respondents is that the applicant was engaged on non-Government capacity and he was not a casual or temporary or regular Central Government employee and not paid from Government fund/Public fund. The appointment of the applicant was wholly on contractual basis and this Tribunal has got no jurisdiction to try the case of the applicant.

4. By filing the Rejoinder Reply, it has been submitted on behalf of the applicant that he has rendered five years satisfactory service in CSD canteen, Bareilly and he cannot be terminated in arbitrary and casual manner. The respondents have passed the termination order in a most casual and perfunctory manner. It is seen that nothing new has been added in the Rejoinder Affidavit by the applicant. Denying the averments made in the Rejoinder Affidavit, the respondents filed Supplementary Counter Affidavit and submitted that the applicant was on probation and his appointment as an Accounts Clerk was neither confirmed, nor extended for the year 2005-06 in spite of written advice by the competent authority to the applicant. Since the applicant failed to explain reasons of his having unauthorized possession of commodities of CSD canteen, the applicant disobeyed the rules and regulations of a disciplined institution, his services have rightly been terminated.

5. Having heard the parties counsel at length and having perused the record, we are satisfied that the applicant was appointed as an Accounts Clerk for CSD canteen, Jat Regimental Centre vide appointment letter dated 14.10.1999 wherein it is clearly and specifically mentioned that the employment can be terminated by giving one month's notice or one month's pay in lieu thereof. It is also provided in the appointment letter that applicant will be at liberty to leave the job by giving one month's notice or surrendering one month's pay in lieu thereof. In clause (e) it is clearly mentioned that by virtue of this appointment, the applicant shall not be entitled to any accommodation nor any house rent nor any other allowances and applicant will be entitled to the monthly salary of Rs.2000/- consolidated, per month with Rs.75/- as increment per year and the working hours will be according to the CSD canteen. From the record, it is abundantly clear that the service condition of the applicant is



purely contractual in nature. Learned counsel for the applicant has placed reliance on the Judgment passed by the Hon'ble Supreme Court in M. Aslam's case (supra). The facts mentioned in M. Aslam's case are quite distinguishable from the present case and does not apply with all force. Having given our considered and anxious thought to the pleas advanced by the learned counsel for the parties, we are satisfied that the applicant is not a public servant and was not paid his salary through public exchequer. His services are purely on contractual basis. Accordingly, we are of the view that no judicial interference is needed in the Orders passed by the respondents. Accordingly, O.A., being devoid of merit, stands dismissed. No cost.


Member (A)


Member (J)

/M.M/