

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad Dated : This the 6th day of September, 1996

CORAM : Hon'ble Mr. S. Das Gupta A.M.

Hon'ble Mr. T. L. Verma J.M.

ORIGINAL APPLICATION No. 1565 of 1993

Mahendra Singh son of Sri Shri Chand
resident of H.No.52, North Arjun Nagar,
District, Agra.

.... Applicant

C/A Sri Satya Prakash.
Sri R.L.Yadav.

Versus

1. Union of India through the Chairman,
Station Canteen (Station Cadre) Indian
Army, Station Head Quarter, Contonment Area
Agra.

2. The Administrative Commandant /
Incharge Station Canteen, Indian Army
Station Head Quarter, Agra.

..... Respondents

C/R Km. Sadhna Srivastava

ORDER

BY HON'BLE MR. S. DAS GUPTA A.M.

Through this application filed
under section 19 of Administrative Tribunals Act, 1985,
the applicant has challenged the order dated 29.9.1993
by which the services of the applicant have been terminate
with effect from 1.10.1993. He has sought quashing the

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the aforesaid order and a direction to the respondents to reinstate him in service and to pay the salary regularly as admissible to him.

2. Briefly stated, the facts leading to filing of the application are that the applicant was appointed in non CSD section of the station canteen as Salesman by appointment letter dated 1.12.1990 (annexure 2). By order dated 30.4.1992, he was appointed as Chowkidar in station CSD canteen, Agra with effect from 1.5.92. Copy of the appointment letter dated 30.4.1992 is at annexure 4. Subsequently by order dated 21.12.1992 (annexure 5), he was appointed as Summary clerk/Salesman with effect from 1.1.1993. Thereafter by the impugned order dated 29.9.1993, it was directed that the applicant's services shall stand terminated with effect from 1.10.1993. The applicant submitted an appeal before the Chairman, Station Canteen, Station headquarter Agra, but the appeal was returned without passing any order and it was stated that no appeal was maintainable against the impugned order.

3. The applicant has challenged the impugned order on the ground that the respondents are not legally justified in terminating his services, stating that his services were no more required, since persons junior to him were still working in the Canteen. The order of the respondents is thus violative of Articles 14 and 16 of the Constitution. It has been challenged also on the ground that the respondents did not issue notice or give any opportunity before passing the order of termination and thus the impugned order is violative of the principles of natural justice.

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4. The respondents have filed counter affidavit in which the basic facts have not been disputed. It has, however, been stated that during the inspection of non-CSD canteen, a discrepancy to the tune of Rs.15,241/- was detected. The management wanted to hold the enquiry, but by then, some of the canteen staff having resigned, the enquiry ordered could not achieve any worthwhile result. The applicant was informed that his services were not terminated at that time as the loss was ^{not} ~~not~~ regularised and hence he was appointed as Chowkidar and later as Summary Clerk/ salesman. During September, 1993 a decision was taken by the Managing Committee to write off the loss and to finally close and merge this account in the Canteen account. It was hence decided by the Chairman Station Canteen to terminate the services of the applicant as per rules of the Canteen after giving him one month's advance of pay. Copy of the extract of the relevant rules has been placed at annexure no. CA 1. It has further been submitted that the question of violation of Articles 14 and 16 of the Constitution ~~do~~ not arise as the appointments of the Canteen staff were made purely on merit. The question of seniority was never taken for consideration. The further submission of the respondents is that the appointment of the Canteen staff is purely of temporary nature as the Canteen is run on regimental fund. The further case of the respondents is that the non-CSD section having been closed down, there was no requirement of the services of the applicant, but his services were not terminated and he was appointed as Chowkidar as the loss was to be regularised. The applicant was adjusted on paper temporarily on other vacancy. It has also been

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alleged that the applicant had a hand in the mis-management of ^{non-} CSD section, causing huge deficiency. This fact could not be proved beyond doubt due to non availability of old Canteen service rules, otherwise the applicant ^{, service} would have been terminated long before and a case would have been registered against him for committing fraud.

5. In the rejoinder affidavit filed by the applicant, he has reiterated his averments in the Original application. He has denied that he was involved in the deficiency caused in the ^{non-} CSD section of the Canteen. The employees who had been involved in the loss had already resigned. The respondents have not filed any documentary evidence regarding the enquiry report. Moreover as he had already been appointed as Darwan and subsequently as Summary Clerk/ Salesman on the CSD side of the Canteen, his services could not have been terminated on the ground that there was no requirement of his services in the non CSD section of the Canteen.

6. We have heard the learned counsels for the parties and carefully perused the records.

7. During the course of argument, the learned counsel for the respondents took the plea that the application is not maintainable before this Tribunal as non CSD canteen was being run by regimental funds. Therefore, it does not fall within the jurisdiction of this Tribunal.

8. We have given careful consideration to the aforesaid plea of the learned counsel for the respondents. There is no doubt that initial a

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of the applicant was on the non CSD side of the Canteen. However, admittedly he was later on shifted to the CSD side of the Canteen initially as Chowkidar and subsequently as Summary Clerk/Salesman. At the time, services of the applicant were terminated by the impugned order, he was working on the CSD side of the Canteen. It has already been held in a number of cases that the CSD Canteen comes within the jurisdiction of the Tribunal. We are, therefore, not persuaded by the plea of the respondents that the present case is not maintainable before us.

9. On merit, we find that the ground taken that as the applicant was not working on the non CSD side, of the Canteen, the closure thereof would have had no effect on the continuance or otherwise of the applicant's services on the CSD side of the canteen, has force. There is no doubt that the applicant's services could have been terminated by giving him one month's notice or one month's pay in lieu. There would have been no reason for us to interfere if this was a case of Simplicitor discharge. However, it is clear from the averments of the respondents themselves that the discharge has been on account of his alleged involvement in financial mis-management of the non CSD section of the Canteen, resulting in financial loss. No record has been produced before us by the respondents to indicate that the applicant was involved in such mis-management. They have actually admitted that nothing came out in the enquiry which was ordered. The termination of the applicant's services is, therefore, not a discharge simplicitor but a discharge as a punitive measure. It is

settled law that services of temporary employees cannot be terminated in the garb of simplicitor discharge when in actuality it is as a penal measure. In such a situation, principles of natural justice would ~~not~~ ~~have~~ been violated, if the person whose services are terminated is not given an opportunity to defend his case.

10. Inview of the foregoing, we find and hold that the impugned order dated 29.9.1993 is bad in law and the same is accordingly quashed. The applicant shall be reinstated in service forthwith on communication of this order. Respondents, however, shall be at liberty to take appropriate action against the applicant in accordance with law, in case he ~~was~~ involved in any misconduct as alleged by the respondents.

11. The application is disposed of with the above direction, leaving the parties to bear their own cost.

J. M.
J. M.

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