

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 8<sup>th</sup> DAY OF MAY, 1995

Original Application No. 703 of 1994

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

HON. MR. S. DAYAL, MEMBER(A)

Ashok Kumar, s/o Sri Attar Singh Sharma  
r/o 52/2, Subhash Nagar, Meerut.

.... Applicant

BY ADVOCATE SHRI SHESH DUTT SHARMA

Versus

1. The Chairman, through Union of India, Ministry of Defence, Board of Administration & General Manager, Canteen Stores Department, Adelphi, 119 Maharishi Karve Road, Post Box 11060, Bombay- 400020
2. The G.O.C  
H. Qr, 9 Inf. Division,  
C/o 56 A.P.C.

.... Respondents

BY ADVOCATE SHRI VIKARAM GULATI

O R D E R(Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicant challenges an order dated 30.11.93 passed by the Canteen Manager of Pine Canteen, H. Qr. Inf. Div., whereby the applicant's services were stated to be no longer required and terminated w.e.f. 10.12.93 consequent to reduction of the strength of civilian staff as per the direction of G.O.C H. Qr. Inf. Division.

2. The applicant was appointed as a Ledger Clerk in the Pine Canteen by an order dated 12.8.92. The counter affidavit and rejoinder affidavit have been exchanged by the parties. In the counter affidavit one of the

main pleas taken is that the Pine Canteen is a Unit Canteen and the applicant cannot be said to be holding the civil post and as such the O.A. is not maintainable before this Tribunal.

3. Reliance has been placed on a decision in the case of Amar Nath Chadda Vs. Union of India and Ors reported in (1991) 15 ATC 507. It has been indicated in the counter affidavit that the Pine Canteen which is the Unit Canteen ~~is~~ <sup>is the</sup> private organisation which is selling various goods to the Army personnels and Ex-service Army Personnels and only those goods are sold which are purchased by the Unit canteen from the Government Depots. It has been indicated that the <sup>organisation of the</sup> Unit Canteen only charges a very nominal profit for maintenance of the unit canteen and salary of its employees are paid from the said funds and not from the fund of the Govt. of India. It has also been indicated that the applicant does not hold any civil post and was not under the employment of the Central Government nor he is governed ~~under~~ Central or State Govt. Employees Employment Rules. It has been stated that certain unit run canteen like the one where the applicant were employed <sup>and where</sup> the work load was more and due to paucity of combatant personnel exists, civilians especially those are needy, unemployed or retired are employed purely as welfare measure. The terms and conditions were mutually agreed upon.

4. In the rejoinder affidavit the applicant has disputed the plea that the Unit canteens ~~which~~ <sup>are</sup> like a private shops. To controvert the said assertion reliance has been placed to an order dated 10.3.94 of respondent no.2, copy of which has been **filed** as RA-1. This letter shows that

it was in reference to the letter sent by the applicant dated 7.2.94. A reading of the same goes to show that the applicant wanted to be considered for employment directly in the Canteen Stores Department. It was pointed out that the Staff Selection Commission conducts examination for the above posts every year for which an advertisement was issued in leading news paper and Employment News. This letter does not show that the applicant was appointed or recruited to any post under the Canteen Stores Department. His appointment was made in the Pine Canteen.

5. In the light of these facts the decision in 'Amar Nath Chaddascase (Supra) needs to be analysed. The applicant therein was an employee in Unit Canteen No.4 Wing Air Force Station Agra. The Division Bench of the CAT Allahabad on consideration of the relevant pleadings in the said case took up the plea whether the Tribunal had jurisdiction for consideration. In the said decision a reference was made to another decision of the Allahabad Bench of the Tribunal in the case of 'R.D. Shukla Vs. Union of India O.A. 213/88 decided on 28.4.89 in which it was held that the Red Eagle Canteen rendering service to the troops of 4 infantry division was run by non public funds and, therefore, its employees were not holder of the civil post under the Union of India and consequently the provisions of Administrative Tribunals Act No. 13 of 1985 were not applicable to them. ~~Reference~~ Reference was also made to another / decision rendered by the Allahabad Bench of the Tribunal in the case of Smt. Shakuntala Chopra Vs. Union of India OA. 524/86. In this case it was noted that the Tribunal had an occasion to examine the nature of the public funds and regimental funds. In that context para 801 of the Defence Service Regulations were analysed as also para 820 of the

said Regulations and 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 so far as this fund is concerned to see in proper utilization


6. The Division Bench in Amar Nath Chaddha's case also took note of the decision of the Hon'ble Supreme Court in the case of 'M.M.R. Khan Vs. Union of India 1990 SCC (L&S) 632. In the said case the Supreme court while considering the question whether the employees of Canteen were Railway employees and entitled to be treated as such while dealing with the case of statutory canteens, non-statutory recognised canteens, and non-statutory non-recognised canteens have also observed as follows:

" We express no opinion on the subject as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us..."

7. After applying the test for determining 'civil post' as laid down in the case of 'Narendra Gupta V. Union of India A.I.R(1986) 1 ATC 414: AIR(1986) 2 CAT 212 and in the case of G.M. Qadri Vs. Secretary to Government AIR 1959 J & K 26 it was held that Amar Nath Chaddha's case he cannot be said to be a holder of ~~civil~~ post and the applicant is governed by the terms and conditions of the contract which he entered into at the time of his employment with the defendant no.2.i.e. the Service Institute which is neither a statutory body nor run by public funds.

8. In the case in hand also in view of the position explained in the counter affidavit we are satisfied that the applicant was not the holder of a civil post and this O.A would not be maintainable before this Tribunal.

9. In view of the said finding it is not necessary to enter into the other questions raised in the O.A as to the validity of the order of termination. ~~Regular~~<sup>Preliminary</sup> objection is upheld and the O.A. is accordingly dismissed. No orders as to costs.

  
Member (A)

  
Vice Chairman

Dated: May <sup>16</sup> .S... 1995

Uv/