

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A.No. 1153/1999

Allahabad this the 23rd day of May, 2002

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mrs. Meera Chhibber, J.M.

Udai Prakash son of Shri Janki Prasad
resident of village Bujurg
post Sidpur, Dist: Etah.

..... Applicant

(By Advocate: Sri N.K. Mishra)

Versus

1. Union of India through
Commander in Chief
Sena Bhawan, New Delhi.

2. Adjettant General South Block
Army Headquarter,
D.H.Q. P.O. New Delhi.

3. Lt Colonel Officer Commanding,
Paraholding Wings
Army Airborne Training School
Agra.

4. Suresh Cook, Cook Air Borne,
Training School, Agra.

..... Respondents

(By Advocate: Sri M.B. Singh)

O R D E R (Oral)

Hon'ble Mrs. Meera Chhibber, J.M.

In this OA the applicant has sought the following
reliefs:

1. To issue a writ of certiorari quashing the impugned order dated 18.5.98 Annexure No.1 to the petition.
2. To issue a writ of mandamus directing the respondents to appoint the petitioner on the post of cook on a regular employment under the control of respondent and to pay his back wages with all consequential benefits or may pass such further order as this Hon'ble Court deems fit and proper under the circumstances of the case.



2. The applicant's case is that he was engaged as a cook on daily wages basis at the monthly salary of Rs.500/- in Army Arbor Training School, Agra as cook mess boy and was given appreciation letter by the officers stating therein that he is hardworking, loyal and sincere person and his work was found satisfactorily. He states that in order of regularisation even his police verification and character verification was done and there was anything adverse against the applicant to deny his regularisation. However by oral orders the petitioner was stopped from working from 2.4.96 without assigning any reason or giving anything in writing, ther fore, his services were terminated on 2.4.96. Against his removal the applicant had filed an appeal, however since no reply was given to his appeal, he had approached the Hon'ble High Court by way of Writ Petition which was disposed of vide order dated 28.10.97 by directing the respondents to decide the representation of the petitioner within six months from the date of the receipt of certified copy of the order (page 22). It is stated by the applicant that since the directions were not complied with by the respondents he had moved a contempt petition before the Hon'ble High Court and as a result of annoyance the respondents rejected his appeal/petition vide order dated 18.5.88 (page 30) on the ground that he was employed in the capacity of a private and domestic servant as a mess boy and his services were no longer required and the same were removed as such his claim for absorption in the Government

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service is not tenable. According to the applicant this order is malafide, arbitrary and does not give any reason or justification for terminating the service of the applicant. Thus he has claimed that the said order be quashed and the respondents be directed to appoint the petitioner to the post of regular employment under the respondents.

3. The respondents have contested the claim of the applicant by stating that the applicant's case itself is contradictory as a person from daily wages can not be said to be a monthly salary. More over as per their averments the petitioner was employed as a domestic help in Junior Commissioned Officers Club which is not a Government organisation and was paid out of individual subscription and simply because some officers had given him certificate of having worked satisfactorily. It does not give him any right to get into Government service on the basis of such certificate. They have further stated that as far as character verification is concerned, it is carried out to police and security as per the manual of Military Security Instructions and cannot be taken to be verification for the purpose of regularisation. They have further stated that applicant is not employed against any vacancy and since he was being using domestic help out of private subscription, his services were terminated as no longer. Thus they have stated that this OA is without any merit and may kindly be dismissed.

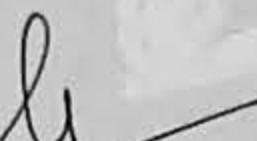
4. The applicant has not filed any rejoinder to the above

said counter affidavit which means that the averments made by the respondents stand admitted in law. Apart from it the moot point to be considered by the Tribunal is whether the OA is maintainable when it is moved by a person who was used as a domestic help by the Junior Commanding Officer for their scope and was being paid from their private contribution and not from the consolidated fund of Government. This point need not arise and this ~~mp~~ point has already decided by the Hon'ble Supreme Court in AIR 1999 SC page 376 in the case of Union of India Vs. Chotelal & Ors., wherein the Dhobis (Washermen) appointed to wash clothes of cadets in National Defence Academy had filed a case for payment of salaries but the same was rejected on the ground that they do not become holders of civil post because of payment of salary from regimental fund. It was held that the regimental fund is not a public fund and since the payment of Dobhi is not of consolidated fund of India or Army Public Fund under the control of Ministry of Defence. Central Administrative Tribunal would have no jurisdiction to go into the question of service condition of such Dhobis. In the instant case also the respondents has specifically stated that the applicant was being paid out of the individual subscription and he was employed as a domestic help in Junior Commanding Officer which is not a Government organisation which fact was unrebutted, therefore, the principles laid down by the Hon'ble Supreme Court in the judgment mentioned, supra, fully covers the present case as well and in view of the law laid down by

the Hon'ble Supreme Court, the OA is totally devoid of merits and not sustainable in the Central Administrative Tribunal, the same is therefore, dismissed. No order as to costs.



Member (J)



Member (A)

v t c.