

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1200 OF 2002
ALLAHABAD THIS THE 17TH DAY OF FEBRUARY, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A


Ajab Singh Vedna,
Son of late Sri Yad Ram Singh,
Resident of Village Daulatgarh,
P.O. Mirjapur, District Bulandshahar,
(U.P.) presently residing at
C/o Shiv Kishore Chaturvedi,
Shiv Colony H.NO.607 Chandpur Road,
Bulandshahar Posted as Store Keeper/
Billing Clerk, Station Canteen,
Bulandshahar.Applicant

(By Advocate Shri V.P. Shukla)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
Government of India,
New Delhi-11.
2. Brigedier Commander,
Head Quarter,
Meerut Sub-area,
Meerut Cantt.
3. Commandant Brigedier,
E.B.S. Babugarh Cantt,
District Ghaziabad.
4. Officer Incharge C.S.D. Canteen,
Headquarter Sub-area,
Meerut Cantt.
5. Lt. Col. D.S. Sirohi (Ret),
Manager Station Canteen,
Bulandshahar (U.P.).Respondents

(By Advocate Shri V.V. Mishra)



O R D E R

This O.A. has been filed under section 19 of Administrative Tribunals Act 1985, by which the applicant has challenged the termination order dated 22.06.2002 (Annexure-1). The applicant has prayed for quashing of the same and direction to the respondents not to give effect to this order dated 22.06.2002 and regularise the services of the applicant as per policy laid down by Army Head Quarters dated 11.05.2001.

2. The facts, in short, giving rise to this O.A. are that the applicant was employed in CSD Bulandshahar. As per applicant the applicant is a Government Servant and he was appointed by Commandant Brigadier, E.B.S. Babugarh by order dated 5.03.2001 (Annexure A-3) for a period of two years as Billing Clerk/ Store Clerk. He was put on probation for a period of three months, which he completed. The applicant has alleged that there have been number of irregularities which were committed by the new manager. The applicant reported the matter to Officer Incharge Canteen, Sub-area, Meerut on 01.01.2002. Due to the complaint filed by the applicant against the manager, the Manager started harassing the applicant and the applicant complained against the Manager on 07.03.2002 again on 21.06.2002. Counter allegations were made by the Canteen Management against the applicant. He was served with a show cause notice on 24.05.2002 (Annexure A-8). The applicant sent reply in regard to the show cause notice on 01.06.2002. His services have been terminated by impugned order dated 22.06.2002. Hence this O.A. which has been contested by the respondents.

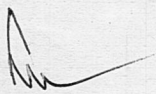
3. Learned counsel for the applicant submitted that the impugned order of termination is not an order simpliciter but is stigmatic as it casts aspersion on the manner,

behaviour and attitude of the applicant. The learned counsel for the applicant also submitted that when there were allegations and counter allegations there should have been an enquiry which has not been done as required under Article 311(2) of the constitution of India.

4. The learned counsel further argued that the appointment letter of the applicant has been issued by Station Commander E.B.S. Babugarh whereas the services have been terminated by DI/C Station Canteen Head Quarters, Meerut Sub-area, Meerut which is illegal, arbitrary and unjustified. The learned counsel for the applicant has relied upon the Judgements^h of Hon'ble Supreme Court in V.P. Ahuja Versus State of Punjab and others (2000) 3 SCC 239, Dipti Prakash Banerjee Versus Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others (1993) 3 SCC 60 and also the judgement of Hon'ble High Court of Allahabad in Jitendra Srivastava Versus Union of India (2002) 2 UPLBEC 1453.

5. The learned counsel for the applicant finally submitted that in view of the orders of the Army Head Quarters letter dated 11.05.2001 (Annexure-7) addressed to Head Quarters, Central Command, the services of the applicant could not be terminated. A direction of the Army Head Quarter contained in letter dated 11.05.2001 is further strengthened by letter dated 17.09.2002 issued by Army Head Quarters, annexed as RA-1.

6. Resisting the claim of the applicant Shri V.V. Mishra, learned counsel for the respondents submitted that the conduct and behaviour of the applicant is not up to the mark. Perusal of Annexure-2,3,4,5,6,7. & 8 will leave no doubt that the conduct of the applicant is not up to the mark. The learned counsel for the respondents further submitted that the




applicant vide his letter dated 26.09.2001 and 01.11.2001 has sought for forgiveness and has also apologised for the mis-behaviour. The applicant is not a fit person to be retained in the Canteen which is basically for the Welfare of the Ex-Servicemen and their families. The learned counsel for the respondents has placed reliance on the judgement of Hon'ble Supreme Court in Hari Singh Mann Versus State of Punjab and others SCC Rulings VOL (13) 449 and also the Governing Counsel of Kidwai Memorial Institute of Oncology, Bangalore Versus Dr. Pandurang Godwalkar and another Supreme Court Service Rulings VOL (13) 413 wherein the Hon'ble Supreme Court has justified the action of termination on account of unfitness and has also laid down that Appointing Authority is entitled to look into any complaint in respect of employee while discharging his duties for purpose of making assessment of the performance of such employee.

7. I have heard counsel for the parties, considered their submissions and perused records.

8. Admittedly the applicant made complaints against the Manager to Higher Authorities. It has also not been disputed that the management also made complaints against the behaviour and attitude of the applicant. From the perusal of the impugned order dated 22.01.2002, it appears that the order is certainly stigmatic and not an order simpliciter. Under such circumstances when there were allegations and counter allegations it was proper for the authorities concerned to have instituted a fact finding enquiry and only then they should have proceeded ahead. In case it was found that the applicant was unfit to be retained in service an action should have been taken after observing the principles of natural justice which inter alia means that the applicant was

given a chance to explain his side of the case. It has been held by Hon'ble Supreme Court in case of V.P. Ahuja (Supra) that a temporary servant is also entitled to certain protection. His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice. The Apex Court in the case of Dipti Prakash Banerjee (Supra) has held that termination order is bad if it contains stigma but no regular enquiry has been conducted. Even ~~in the order~~ ^{by Hon'ble} of High Court of Allahabad in the case of Jitendra Srivastava (Supra) has held that termination order passed against temporary employee would be against law if it is punitive and hence has been passed without ~~fulfilled~~ [✓] enquiry after giving chargesheet. In the instant case, I find that the termination order is no doubt stigmatic and it has been passed without following the principles of natural justice.

9. The learned counsel for the respondents in support of his arguments has relied upon the judgement of the Hon'ble Supreme Court in the case of the Government Council of Kidwai Memorial (Supra) and also in Hari Singh Mann (Supra). Both these cases are easily distinguishable because the judgement of Hari Singh Mann deals with a probationer of Punjab Civil Services whose services were terminated as he failed to pass the final examination at the end of his period of training. Besides the services were terminated on the ground of unfitness for appointment and not on the ground of any mis-conduct or inefficiency. Therefore, the principle laid down by Hon'ble Supreme Court in this case will not help the respondents. Even the law laid down by Hon'ble Supreme Court in the case of The Governing Council of Kidwai Memorial Institute of Oncology, Bangalore (Supra) cited by the respondents is also distinguishable and is not applicable in the present controversy.



10. The principles of natural justice demand that when a definite allegation is made by any party, an enquiry is instituted to ascertain the correct facts. Only then the action should be initiated as provided in the rules. I also find force in the submission of the learned counsel for the applicant that The Commandant E.B.S. Babugarh is the appointing authority of the applicant and, therefore, the applicant's services could not be terminated by the respondent no.4 i.e. O.I./C C.S.D. Canteen, Head Quarters Sub-area, Meerut.

11. For the reasons stated above, the O.A. is allowed. The impugned order dated 22.06.2002 is quashed. The respondents are directed to reinstate the applicant with immediate effect. However, liberty is given to the respondents to take appropriate action observing the Principles of natural justice.

12. There shall be no order as to costs.



Member-A

/Neelam/