

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THIS THE 7th DAY OF APRIL, 2007

Original Application No. 1399 of 2006

Connected with

Original Application No. 1485 of 2006

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.

HON.MR.K.S.MENON, MEMBER (A)

Kawaljeet Singh,
Son of Late Manik Singh,
House No.5-B, Lal Bihara,
Bamrauli, Allahabad.

.. Applicant

(By Adv: shri B.N. Tiwari)

Versus

1. Union of India through Secretary
Ministry of Defence, New Delhi.
2. Officer Incharge, Air Force canteen,
Central Command, Air Force,
Bamrauli, Allahabad
3. Chief Administrative Officer,
Central Command, Air Force,
Bamrauli, Allahabad.

. Respondents.

(By Adv: Shri Saumitra Singh

Original Application No. 1485 of 2006

Rajesh Kumar, son of Rajan,
Resident of 17-A, Lal Bihara,
Post Bamrauli, Police station
Dhoomanganj, district Allahabad.

..Applicant

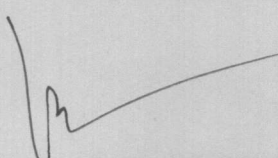
(By Adv: shri B.N.Tiwari)

Versus

1. Union of India through Secretary,
Ministry of defence, R.K. Puram,
New Delhi
2. Officer Incharge, Air Force Canteen,
Central Command, Air Force,
Bamrauli, Allahabad.
3. Station Commander, Group Captain,
S. Maingi, Air Force Station
Bamrauli, Allahabad.

.. Respondents


(By Adv: Shri Saumitra Singh)



ORDER**BY HON.MR.JUSTICE KHEM KARAN,V.C.**

While in OA No.1399/06 the applicant is challenging appointment order dated 30.11.06 and is asking for directing the respondents to treat him an employee of Air Force Canteen . In OA No.1485/06 not only order dated 30.11.06 but order dated 19.12.06 is also challenged. By these orders the respondents have offered them new appointment on totally different terms and conditions. They say that the respondents be directed to treat them as employee of Air Force Canteen on the basis of their absorption dated 24.12.04 and pay salary etc accordingly.

2. Applicant Kawaljeet Singh was admittedly a permanent Auditorium Operator in Air Force Auditorium, Bamrauli, Allahabad. Rajesh Kumar applicant in OA No.1485/06 was admittedly, a Poster Boy in the said Auditorium. Auditorium was closed and thereupon both these persons together with one more were absorbed in Air Force Canteen (Non CSD Counter) vide order dated 24.12.04 (Annexure-4). Both of them started working pursuant to order dated 24.12.04. It appears, that in the month of November the respondents took a decision to close down Suvidha Store, attached to Canteen and thereupon decided to adjust the two applicants on other posts. With a view to adjust Kawaljeet Singh the respondents issued letter dated 30.11.06 proposing to reappoint him in Unit run Canteen a non Public Fund Venture in the pay scale of Rs. 2550-55-2660-60-3200 on new terms and conditions. Likewise, similar appointment was offered to Rajesh Kumar vide letter dated 30.11.06 read with letter dated 19.12.06, proposing to appoint him as Delivery Boy/Driver in Vayusena Gas Agency on a monthly pay of Rs.2000/- plus D.A. Aggrieved of these two letters dated 30.11.06 and 19.12.06, Rajesh Kumar filed OA 1485/06 and aggrieved of letter dated 30.11.06 Kawaljeet Singh filed OA No.1399/06. In both the OAs the grounds taken are the same. It is said that once on closure of Air Force



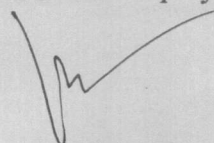
Auditorium they were permanently absorbed vide order dated 24.12.04 in Air Force Canteen, it was not open to the respondents to put an end to that arrangement and propose new appointment, on totally different terms and conditions ignoring previous service. They say that they have worked in Air Force Canteen for almost two years and now they are being un-necessarily uprooted from there, on conditions wholly disadvantageous to them.

3. In OA No.1399/06 by an interim order dated 15.12.06 the Bench stayed the operation of order dated 30.11.06 and that stay is continuing. Likewise, in OA No.1485/06 this Tribunal restrained the respondents from compelling the applicant to join on the post mentioned in the appointment letter dated 19.12.06 and also directed them to ensure that the applicant was paid his salary which he was getting earlier to 19.12.06. This interim order is continuing.

4. The respondents have filed reply contesting the claim of the two applicants. Their defence is that on closure of Auditorium in 2004, the two applicants were not absorbed in Air Force Canteen but in Suvidha Store and when Suvidha Store ran into losses a decision was taken to close and with a view to provide means of livelihood to the applicants it was decided to appoint them on different position and so appointment letters dated 30.11.06 and 19.12.06 were respectively sent to Kawaljeet Singh and Rajesh Kumar. They say that when the two applicants did not report for duty, or did not accept the offer of appointment within the stipulated time, the appointments were cancelled. They say that mere issuing of Smat Card or Entry Pass etc, to the applicants during the period of their service after 24.12.04 is not proof of the fact that they were employees of Air Force Canteen or Unit-run canteen.

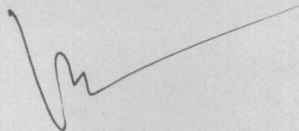
5. We have heard Shri B.N.Tiwari appearing for the applicant and Shri Saumitra Singh appearing for the official respondents and have perused the entire material on record of the OAs.

6. Shri B.N.Tiwari, has contended that in view of the decision of the Apex court in Union of India Vs. M.Asalam, AIR 2001 SC pg 526 employees of Unit-



run Canteens of the Armed Forces are government servants. He says that in compliance of the directions of the Apex court given in this case, the respondents have promulgated Rules in 2001, for regulating the recruitment and other conditions of service of the employees of Unit-run Canteens paid out of non public funds. Copies of such rules are available in OA No.1399/06 According to Shri Tiwari, once the applicants were absorbed vide order dated 24.12.04 the applicants cannot be dislodged from Air Force Canteen without having recourse to the rules of 2001 and cannot be compelled to accept any other appointment as proposed by the respondents. The learned counsel has tried to say that Suvidha Store, was never in existence nor the absorption dated 24.12.04 was in Suvidha Store and so, the respondents cannot oust them from Air Force Canteen on closure of any such Suvidha Store. The learned counsel has, taken us through the absorption order dated 24.12.04 so as to emphasize that this absorption was final and according to it the two applicants were adjusted in Air Force Canteen (Non CSD Counter) with the pay which they last drawn in Air Force Auditorium.

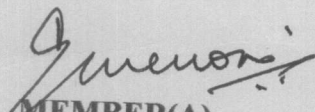
7. Let us see absorption order dated 24.12.04. A bare perusal of this order would reveal that the present two applicants were absorbed in Air Force Canteen for non CSD Counter, w.e.f. 1.1.2005 on salaries last drawn by them in Air Force Auditorium. Para 2 of this letter provides that pay scales and allowances as applicable on the basis of the initial terms of service will be continued and the details of pay scale will be forwarded very shortly along with documents of above named individuals. This letter dated 24.12.04 gives an impression that the individuals mentioned therein were permanently absorbed in Air Force Canteen for Non CSD Counter. Although nothing has been made clear as to what is difference between CSD Counter and Non CSD Counter but what appears to be clear is that their absorption was in Air Force Canteen. Subsequent letter dated 26.2.2005, issued by Shri K.K. Singh, Wing Commander, OCAF Canteen addressed to Security Office, 29 Wing Air Force Bamrauli (A-7). In OA No. 1399/04 also supports the contention of the applicant that till then they were

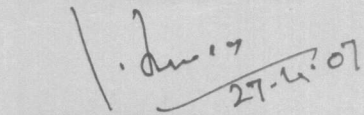


working in Unit-run Canteen but were to be shifted to Non CSD Suvidha Shop. For our purposes the absorption of the two applicants was in Air Force Canteen for Non CSD Counter. Order dated 24.12.04 does not say that this absorption was in Suvidha Store. We find sufficient force in the submission of Shri Tiwari that absorption dated 24.12.04 was in Air Force Canteen but for Non CSD Counter.

8. The respondents have not been able to satisfy us as to how on the closure of Suvidha Store the applicants could have been dislodged from the place indicated in order dated 24.12.04 and how they could have been offered new appointment on totally different terms and conditions, not acceptable to them. Shri Singh has said that absorption dated 24.12.04 was on humanitarian grounds and the applicants had no right to be so absorbed after Air Force Auditorium had been closed. It may be true, that after closure of Air Force Auditorium the applicants had no valid right to claim absorption on their own terms and conditions but once the respondents absorbed them, on the terms and conditions mentioned in order dated 24.12.04, they are now stopped from dislodging the applicants from there.

9. The two OAs deserve to be allowed. There appears to be no need for quashing the appointment letters dated 30.11.06 and 19.12.06 respectively as the respondents themselves say that they have cancelled the same on failure of the applicants to accept the same. So without quashing the appointment letters, we direct the respondents to allow the two applicants to continue on the post on the basis of their appointment dated 24.12.04 and pay them salary. They will also take suitable action in compliance of para 2 of the said appointment letter dated 24.12.04. No order as to costs. Let a copy of this order be placed on the record of OA No.1485/06.


MEMBER(A)


VICE CHAIRMAN

Dated: April , 2007

Uv/