

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 348/96 and batches 102

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DATE OF DECISION 12.10.2001

Arvind Dutta .. Petitioner

Mr. J.K. Kaushik .. Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Vinit Mathur &
Mr. Dalip Singh Rajvi Advocate for the Respondent (s)




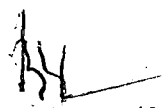
CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(Gopal Singh)
Adm. Member


(Justice B.S. Raikote)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Order : 12.10.2001

1. O.A. No. 348/1996

Arvind Dutta s/o Sh. Narayan Dutta, aged about 23 years resident of No. 133/134 Jawahar Colony, Near Sardar Club, Opp. Green Gate, Jodhpur, at present employed on the post of Clerk-cum-Typist in the office of Battle Axe Canteen Head Quarter 12 Inf. Div. C/o. 56 APO.

... APPLICANT.

versus

1. Union of India through its Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief of the Army Staff, Ministry of Defence, Raksha Bhawan, New Delhi.
3. General Officer Commanding, 12 Infantry Division, C/o. 56 APO.
4. The Canteen Officer, Battle Axe Canteen, Hq. 12 Inf. Division, C/o. 56 APO.

... RESPONDENTS.

2. O.A. No. 105/2001

Smt. Kundan Kanwar w/o. Late Naik Mahendra Singh Chauha, aged about 32 years, resident of Plot No. 142, ZSB, B J S Colony, Jodhpur, at present employed on the post of Salesman in Battle Axe Canteen Hq. 12 Ing. Div. C/o. 56 APO.

... APPLICANT.

3. O.A. NO. 106/2001

Rajesh son of Shri Ghewar Lal, aged about 30 years, resident of Plot No. 23, Prithvi Pura, Harisan Basti, Rasala road, Jodhpur, last employed on the post of Safaiwala, in the office of Battle Axe Canteen, Hq. 12 Inf. Div. C/O. 56 APO.

... APPLICANT.



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4. O.A. No. 111/2001

Shiv Prasad son of Shri Keshar Dev. Sunda, aged about 28 years, resident of Plot No. 423, Mohan-B, BJS Colony, Jodhpur, at present employed on the post of Computer Operator, in the office of Battle Axe Canteen, Hq, 12 Inf. Div. C/o. 56 APO.

... APPLICANT.

v e r s u s

1. Union of India through Secretary to Govt. of India, Min. of Defence, Raksha Bhawan, New Delhi.
2. G O C, Hqrs. 12 Infantry Division, C/o. 56 APO.
3. Dy. G O C, Chairman, Battle Axe Canteen, Hqrs. 12 Infantry Division, C/o. 56 APO.
4. Lt. Col. J S Lamba, Canteen Officer, Battle Axe Canteen, Hqrs. Infantry Division, C/o. 56 APO.

... Respondents in OA Nos. 105, 106 & 111/2001.



Mr. J. K. Kaushik, counsel for the applicants in all OAs.

Mr. Vinit Mathur, counsel for the respondents in OA No. 348/96.

Mr. Dalip Singh Rajvi, counsel for the respondents in OA Nos. 105/2001, 106/2001 & 111/2001.

CORAM :

Hon'ble Mr. Justice, B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

The O.A. No. 348/96 is filed by one Mr. Arvind Dutta, challenging the order of termination vide Annexure A/2 dated 24.02.1996. He has also challenged the order Annexure A/3 ~~order~~ dated 08.08.96, by which the representation of the applicant was rejected. He has also challenged the vires of Paras 52, 75, 76 and 77 of the Standard Operating Procedure (hereinafter referred

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to as SOP) as being illegal and unconstitutional.

2. In OA No. 105/2001, the applicant Smt. Kundan Kanwar, has challenged her oral termination dated 30.04.2001 by the 4th respondent. She has also prayed for the regular pay scale as Accountant at the rate applicable to his counterpart in CSD with all arrears.

3. In OA No. 106/2001, the applicant Shri Rajesh, has challenged his oral termination order dated 30.04.2001. He has also prayed for the payment of pay scale on the post of Accountant at the rate applicable to his counterpart in CSD.

4. Likewise, in OA No. 111/2001, the applicant Shri Shiv Prasad has challenged his oral apprehended termination by the 4th respondent. He has also sought for grant of pay scale as Accountant at the rate applicable to his counterpart in CSD.

5. All the above applications basically involve common questions of law and facts, and hence we are disposing all of them by the common judgement and order. Moreover, all the applicants claim to be employees under Battle Axe Canteen governed by the SOP. Since OA No. 348/1996 involves an additional relief of striking down the Paras 52, 76 and 77 of SOP, we think it ^{appropriate to} deal with this case first.

6. All these applicants belong to Unit Run Canteens. As noticed by Hon'ble the Supreme Court in Union of India & Ors. vs. M. Aslam



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& Ors. [2001 (2) SLJ 287], there are two types of Canteens, (i) Canteen Stores Department (CSD, for short) and (ii) Unit Run Canteen. So far as the CSD is concerned, it is a permanent department and its employees are considered to be a permanent employee with their own set of rules and regulations. We are not concerned with the employees of the CSD. The applicants herein claim to be the employees under Unit Run Canteens. In regard to the employees in Unit Run Canteen, Hon'ble the Supreme Court in Aslam's case referred to above, has held as under :-



"4... As already stated, we have come to the conclusion about the status of the employees serving in Unit-run Canteens to be that of Government servants, but that by itself ipso facto would not entitle them to get all the service benefits as is available to the regular Government servant or even their counter parts serving in the CSD Canteens. It would necessarily depend upon the nature of duty discharged by them as well as on the Rules and Regulations and Administrative Instructions issued by the employer. We have come across a set of Administrative Instructions issued by the Competent Authority governing a service conditions of the employees of such Unit-Run Canteens. In this view of the matter, the directions of the Tribunal that the employees of the Unit-Run Canteens should be given all the benefits including the retirement benefits of regular Government servants cannot be sustained and we accordingly, set aside that part of the direction. We, however, hold that these employees of the Unit-Run Canteens will draw at the minimum of the regular scale of pay available to their counter parts in the CSD.

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and, we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-Run Canteens at an early date, preferably within six months from the date of this judgement. This appeal is accordingly disposed of with the aforesaid direction and observation."

7. From the above judgement, it is clear that the employees serving in Unit-Run Canteens are held to be a Government servant. Hon'ble the Supreme Court has further held that only because they are Government servants, they would not ipso facto entitle to get all other ^{service} benefits that are available to the regular Government servants, or available to their counter parts serving in the CSD canteens. Hon'ble the Supreme Court also has held that the service conditions of the employees in the Unit-Run Canteens would depend upon the Rules and Regulations and Administrative Instructions issued by the employer. Hon'ble the Supreme Court also took note of the set of Administrative Instructions issued by the competent authority governing the service conditions of the employees of such Unit-Run Canteens. In OA No. 348/1996, Paras Nos. 52, 75, 76 and 77 of the said Rules and Regulations / Administrative Instructions, known in the department as SOP, are challenged as being ultra-vires of the Constitution. But in our considered opinion, such challenge of the Rules and Regulations as also the Administrative Instructions, cannot be accepted for the simple reason that Hon'ble the Supreme Court has noticed those Rules with approval in Aslam's case (supra). Therefore, it is too late to challenge the SOP. Hon'ble the Supreme Court has clearly observed that these Administrative Instructions issued by the



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competent authority were governing the service conditions of the employees of such Unit-Run Canteens. In this view of the matter, we have no option but to reject the contention of the applicant in support of his challenge to Paragraphs 52, 75, 76 and 77 of the SOP.

8. In Aslam Khan's case, Hon'ble the Supreme Court, after holding that such Unit-Run Canteens would not be entitled to other service benefits available to the regular Government servants, including the employees of the CSD Canteens, further held that employees of the Unit Run Canteens would be entitled to minimum of the regular scale of pay on par with their counter parts in CSD. Regarding other conditions of service, like pension, subsistence allowance etc. whatever that is not provided in Administrative Instructions (namely SOP), the Central Government was directed to frame appropriate Rules in that behalf. In the case on hand, we are concerned only with termination of the applicants. In OA No. 348/1996, there is written order of termination vide Annexure A-2 dated 24.02.1996 and rejection of his representation vide Annexure A-3 dated 08.08.1996. In OA Nos. 105/2001, 106/2001 and 111/2001, the applicants are aggrieved against the oral orders of termination. The question of other benefits like minimum pay scale etc. would arise only if their termination orders are set aside, but not otherwise. In this view of the matter, we next proceed to examine the validity of their termination orders, in the light of Administrative Instructions called SOP.



9. In OA No. 348/1996, the applicant was appointed with a consolidated pay of Rs. 1,760/- vide Annexure A-6 dated

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21.03.1995, as Canteen Clerk cum Typist w.e.f. 02.11.1994, stating that his services were liable to be terminated within one month's notice or one month's pay in lieu thereof. In Annexure A-7 dated 01.09.1995 the applicant Arvind Dutta has been given extension for one year and after that one year, vide Annexure A-2 dated 24.02.1996 his services has been terminated. Against that order, it appears that he filed OA No. 123/1996, but vide judgment and order of this Tribunal dated 16.05.1996, he was directed to make representation and accordingly, he made one representation and the same has been rejected vide Annexure A-3 dated 08.08.1996. Thereafter, he has filed this present OA. Thus, from the very nature of the appointment vide Annexure A-6 and A-7, it is clear that Mr. Arvind Dutta was appointed on temporary basis as Canteen Clerk cum Typist and his appointment was extended for one year more. The respondents by filing the reply statements contended that his appointment being temporary and contractual basis on a fixed wages, he is not entitled for regularisation. The respondents have also stated that in terms of Paragraph 62 of SOP, the services of the applicant and other persons were only temporary and they may be terminated at any time by the appointing authority and by giving him one month's notice or one month's salary in lieu thereof as per discretion of the Chairman. They have also stated that the appointment order of the applicant was only on contractual basis for a prescribed period, and as such, he is not entitled to regularisation. Though, they have contended that the employees of the Unit Run Canteens are not Central Government Employees, as we have stated above, Hon'ble the Supreme Court already ruled in Aslam Khan's case (Supra), that employees under Unit Run Canteens are government servants, subject to the Rules and Administrative Instructions framed by employer.



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10. The other applicants in OA Nos. 105/2001, 106/2001 and 111/2001, contended that they were appointed by an oral order as Accountant and now they are being terminated by another oral order issued in 2001. Though, all of them claim to be appointed as Accountant, but from the reply of the respondents vide Annexure R/1, it is clear that the applicant Smt. Kundan Kanwar in OA No. 105/2001 was appointed as Sales Woman and the applicant Rajesh in OA No. 106/2001 was appointed as Safai Wala on temporary basis and the applicant in OA No. 111/2001 Shiv Prasad was appointed as Billing Machine Operator. Therefore, the statements of the applicants in OA No. 105/2001, 106/2001 and 111/2001 that they were all appointed as Accountant appears to be false statement on the basis of Annexure R-1. The respondents denying all the allegations of the applicants, contended that they being appointed on casual and temporary basis on a consolidated amount, the services of the applicants are liable to be terminated as per Paras 51 and 52 of SOP. Therefore, the impugned termination orders does not call for any interference, nor they are entitled to regularisation with minimum pay scale similar to the employees in CSD.



11. From the statements made by the applicants in these OAs, we find that the applicants were appointed for a specified period on a consolidated amount or they were orally appointed purely on casual basis. From the very nature of their appointments, it is clear that they were all temporarily appointed. The respondents further contended that their temporary appointments were not made according to any prescribed procedure. It was only made as and when any urgency exists, by exercising the powers conferred on the Chairman under Paras 51 and 52 of SOP. They have also stated that the termination of the applicants in OA Nos. 105/2001, 106/2001 and 111/2001 were on the basis of the directions issued by the

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Chairman to cut down the expenditure in Battle Axe Canteens and accordingly, discontinued the services of the applicants in these OAs vide Annexure R/5 (in OA No.111/2001). They have also stated that the work of the Unit Run Canteens are adjusted with the help of other regular staff by transfer in order to cut down the expenditure, and finding the applicants surplus, they are being terminated. As against this argument, the contention of the learned counsel for the applicants is that other Army Officers cannot be engaged in the Unit Run Canteens in terms of Army order No. 584/73 vide Annexure A-9 (in OA No. 348/1996). Therefore, engaging other Army Officers in Unit Run Canteens in terms of SOP, is illegal. They also contended that the relevant Paragraph Nos. 75, 76 and 77 of SOP would be contrary to Army Order No. 584/73, therefore, the Army Officer could not have been employed in Unit Run Canteens so as to create an artificial surplus of staff in the Canteens. Therefore, the whole exercise in terminating the applicants either by a written order or by an oral order, is illegal.



12. The fact that the employees in Unit Run Canteens are governed by SOP, is not disputed. As we have stated above, Hon'ble the Supreme Court has taken note of this SOP with approval. If that is so, now we have to see whether the termination of the applicants either by written or oral order is illegal or not.

13. Paragraph 51, 52 and 53 of the SOP, reads as under :-

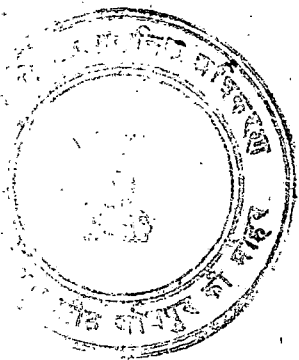
"51. The Canteen posts for civilian employees will be regarded as temporary and shall continue till such time the Canteen management permits in the interest of service and organisation. Canteen Staff is not permitted to be members of any trade union.

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52. Services of any/all canteen employees can be terminated by the appointing authority at any time without any notice. However, at the discretion of the Chairman, a month's notice or a month's pay in lieu thereof without assigning any reason may be given to an employee before terminating his service.

53. Canteen employees are at liberty to resign from service after giving a month's notice provided there are no outstanding claims/dues against that employee."

14. From reading of Para 51 of the SOP. It is clear that the Civilian employees employed in the Unit Run Canteens are regarded only as temporary and they can be continued till such time the canteen management permits "in the interest of service and organisation". Relying on this paragraph, the learned counsel appearing for the respondents contended that the Canteen Management has power to terminate such temporary employees in the interest of the organisation required. He also further stated that the Defence Establishment is in the sensitive area and ultimately, if the defence department decides that certain persons cannot be continued in the organisation having regard to the security of the nation, such temporary employees could be terminated in terms of Para 52 at any time without notice. However, at the discretion of the Chairman, all such employees are entitled to one month's notice or one month's pay in lieu thereof. At the same time, such employees are also ^{at liberty to} resign from service in terms of Para 53. In support of his argument, he relied upon the judgment of Hon'ble the Supreme Court reported in AIR 1964 SC 1854 (Champak Lal Chimanlal Shah Vs. Union of India), in AIR 1986 SC 999 (Bachi Ram Vs. Union of India and Others), AIR 1990 SC 2054 (Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others), 1992 SCC (L&S) 767 (Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (Smt.)], 1995 SCC (L&S) 364 (Madhya Pradesh Hasta Shilpa Vikas



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Nigam Ltd. Vs. Devendra Kumar Jain & Others) and 1997 SCC (L&S) 267 (Ashwani Kumar & Others Vs. State of Bihar and Others). In support of his argument that such appointment for the employees in Unit Run Canteens is purely on contractual and ad hoc basis on a consolidated pay for a fixed period and such employees can be terminated in terms of contract, he relied upon 1992 SCC (L&S) 767. He further contended that the very appointment of the applicants being illegal and contrary to the procedure, ^{they} cannot claim confirmation or regularisation in view of the law declared by Hon'ble the Supreme Court in 1997 SCC (L&S) 267. We find that there is substance in the arguments of the learned counsel for the respondents.

15. From the reading of the judgment of Hon'ble the Supreme Court in AIR 1964 SC 1854, Hon'ble Supreme Court has held that the termination of the temporary employee under Rule 5 of the Central Civil Services (Temporary service) Rules, 1949, with one month notice or payment of one month's pay in lieu of notice, is not hit by Article 16 of the Constitution. In AIR 1986 SC 999, Hon'ble the Supreme Court also has further held that a temporary employee can be terminated and it is not necessary that the payment of notice salary shall be given to such employee simultaneously with the order of termination. In AIR 1990 SC 2054, Hon'ble the Supreme Court also has laid down the law that the daily rated worker continued for some time, cannot claim absorption/regularisation. From the above judgments, it is clear that all the applicants being appointed purely on temporary basis for a specified period or appointed on daily wages, cannot claim regularisation, nor they can challenge the orders of termination as long as it is within the powers of the Canteen Management, in



terms of Paras 51, 52 and 53 of SOP. In the instant case, the applicants have been paid one month's salary in advance though some of them have refused it. Even though, they have refused but are entitled to receive it. At any rate, there is compliance with the Paragraphs Nos. 51, 52 & 53 of SOP. In these circumstances, the impugned orders of termination do not call for any interference. However, the learned counsel for the applicants submits that the impugned orders of the termination have been issued without any notice to the applicants. In 1995 SCC (L&S) 364, Hon'ble the Supreme Court has laid down the law that the appointment made on temporary basis is terminable without notice or assigning any reason, and in such circumstances, following of principles of natural justice in terms of Article 311 would not be necessary, and Hon'ble the High Court committed an error in holding that such employees were entitled to hearing before the termination of the applicants therein. We think it appropriate to extract the relevant paragraph as under :-



"5. A plain reading of these two orders will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary government servant does not become a permanent government servant unless he acquires that capacity by force of a rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the appellant-company to have required that status. On the contrary the respondent all along continued to be temporary and according to the terms of the order of appointment their services could be terminated any time without any notice or assigning any reasons. In such a case it is not necessary to follow the formalities contemplated by Article 311 of the Constitution. In these facts and circumstances the High Court was not right.

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holding that the respondents were entitled for being heard before passing the said order of termination was bad in law on that account."

16. In the light of the above consistent law declared by the Hon'ble Supreme Court, the applicants being appointed on temporary basis, neither they can claim for absorption nor they can challenge the orders of termination. Moreso, in OA Nos. 105/2001, 106/2001 and 111/2001, their appointments are sought to be terminated in terms of the advice by the Chairan vide Annexure R/1 to cut down the expenditure by adjusting the regular staff. These are all within the discretion of the employer and also consistent to the Government Policy to cut down the over all expenditure on civil service. Therefore, we do not find any infirmity or illegality in the impugned orders of termination either written or oral.



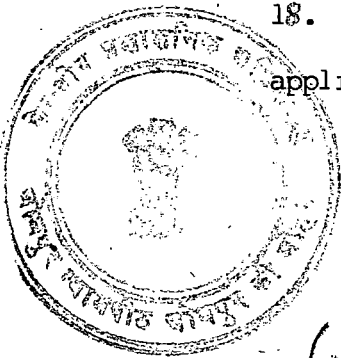
17. However, the learned counsel for the applicants contended that the other employes like Army Officers could not be employed in the Unit Run Canteens as per Army Order No. 584/73. From the reading of the said order, we find that the above order superceeded the order dated 15.09.1996. It is no doubt true that no military personnel is to be used in the running of the Canteens the said letter, but this Army Order has been superseded by the statutory in terms of Para 2(b) of the instructions, namely SOP. Moreover, Para 74 of SOP provides that the service of the conservancy safaiwala stationed at Headquarters can be utilised in Canteens and canteen can appoint only a part time Safaiwala in case the said station Headquarters does not provide conservancy safaiwala. In fact, vide Annexure R/1 (in OA No. 105/2001), it is clear that Shri Rajesh was working as a safaiwala and that post is now sought to be adjusted by regular safaiwala. Likewise the applicants i OA No. 106/2001 and 111/2001 were sought to be adjusted by othe

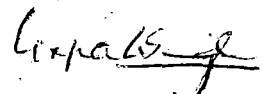
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regular safaiwalas, and the law does not prohibit such adjustment having regard to the economy measure. So far as SOP is concerned, it does not prohibit the services of regular Armyman in Canteens in terms of Paras 75, 76, 77 and 82 etc. of SOP. In this view of the matter, in our considered opinion, the applicants cannot rely upon the Army order No. 584/73, which is inconsistent with SOP. Any instructions and letter etc., which are contrary to the statutory instructions, the same shall be in-operative. Viewing from any angle, we do not find any merit in these applications. Since the termination of the applicants either by oral or written is sustained, the applicants would not be entitled to any relief, like fixing of pay etc.

18. For the above reasons, we do not find any merit in these applications. Accordingly, we pass the order as under:-

The Original Applications No. 348/1996, 105/2001, 106/2001 and 111/2001 are hereby dismissed. But in the circumstances, without costs."




(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.

Part II and III destroyed
in my presence on 22.5.07
under the supervision of
section officer () as per
order dated 23/3/07

Nanku
Section officer (Record)

कौपी छा.पत्र की

परमन सिंह 19/10/2007
के लिए विनिमय माथुर डकनो के

As per Authority letter
dt. 19/10/2007
filed in Part 'C'

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