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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 14/2002

DATE OF ORDER: 29 .01.2007

Balu Ram Prajapat: Applicant

Mr. R.S. Shekhawat & Mr.P.S. Bhati : Advocate for
the Petitioner

VERSUS

The UOI & Ors. : Respondents

Mr.Ravi Bhansali. : Counsel for the Respondents 1 to 4
None Present for R.5

CORAM:

Hon'ble Mr. J K Kaushik, Judicial Member
Hon'ble Mr. R R Bhandari, 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 ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

R.R. Bhandari
(R.R. Bhandari)
Administrative Member

J K Kaushik
(J K Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 14/2002
Date of order: 29.01.2007

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Balu Ram Prajapat S/o Sh. Laxmanram Prajapat, Resident of Ahuja Colony, Civil Airport Road, Air force Area, Ratanada, Jodhpur.

...Applicant

Mr. R.S. Shekhawat, Advocate, and Mr. P.S. Bhati, Counsel for the applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Defence, Central Secretariat, New Delhi.
2. The Director General (Canteen Services) Quarter Master General's Branch, Army Head Quarters, New Delhi-110001.
3. Air Officer Commanding, Air force Station, Jodhpur (Ratanada-Jodhpur) 342011.
4. Officer-in charge, Airforce, C.S.D. Canteen Airforce Station, Jodhpur, Ratanada, Jodhpur-342011.
5. 601273-K, JWO Surendra Mohan (Telst, R.I.Op) Airforce C.S.D. Canteen Jodhpur, Ratanada, Jodhpur.

...Respondents

Mr. Ravi Bhansali, counsel for Respondents No.1 to 4.
None for Respondent No. 5.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Balu Ram Prajapat has inter-alia, questioned the validity of his termination order dated 27.10.2001 at Annexure A-6 and rule 4 relating to probation period as provided under terms and conditions of service of Air Force URC Employees (for brevity "conditions"), vide order dated 16.10.1999 at Annexure A-13 and has sought for quashing and setting aside of the same with a further direction to absorb the applicant on the post of Manager with all the consequential benefits

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and also to quash the appointment of respondent No. 5 vice applicant amongst other reliefs.

2. We have heard the learned counsel for both the contesting parties in piecemeal at number of occasions and arguments were finally concluded on 25.1.2007. We have perused the pleadings, records of this case and also the personal file relating to the applicant as well as the provisions envisaged in Chapter I and Chapter VI of IAP 3503.

3. The factual background of this case indicates that the applicant had earlier served the Indian Air Force during the period from 16.5.1979 to 31st May 1998 and retired from service as Junior Warrant Officer in the Accounts Branch. In response to a Station Routine Order (for brevity "SRO"), Sr. No. 64 of 1999, dated 7.6.1999, inviting applications for the post of Manager, the applicant applied on 16.6.1999, vide Annexure A-1. The applicant was subjected to an interview conducted by Board of Officers on 7.7.1999. He was found most suitable candidate and was accordingly given appointment w.e.f. 1.9.1999, after completion of certain formalities. The applicant has served the respondents with best of his ability and efficiency. His appointment was initially on probation for a period of one year, which was extended from time to time by the respondents and the last extension was upto 30th September 2001. On 20th October 2001, the impugned termination order of termination came to be issued directing termination of service of the applicant as no longer required, and terminated as per rule 24. One month's pay was also has been granted to him in lieu of notice. Vice him one JWO Surender Mohan, was directed to take charge from him in clear-cut violation of Air Force Orders and instructions issued by Command Headquarters.



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4. The Original Application has been grounded on numerous grounds mentioned in para 5 and its sub paras. Some of them are that canteen employees are Central Government Employees; applicant was appointed to the post of Manager after due selection procedure, he has completed the requisite period of probation, including extended period thereof and deserve confirmation. He has been replaced in clear-cut violation of Air Force Order No. 204 of 1977. He had experience of 29 years of accounts branch of respondent department and was assured that he will be made permanent. The rule 4 relating to the Probation Period Clause has been assailed as unconstitutional and said to be not following the basic parameters of service law. The respondents have also breached the principles of natural justice.



5. The official respondents have filed a detailed and exhaustive reply to the Original Application. It has been averred that the applicant has wrongly stated that he has been given best of his services to the canteen. He was issued with a warning letter to improve his work, vide letter-dated 29.6.2001, by the competent authority. The probation period of the applicant was extended from time to time with a view to give him a chance to improve. It has also been averred that the terms and conditions of the canteen employees, envisaged that confirmation would not be automatic. He was extended full opportunity to improve but he could not improve his performance and under these circumstances, the impugned order of termination came to be issued. It is wrong to contend that the instructions provided under Air Force Order No. 204 of 1977 have been violated. As per para 4(d) of the Air Force Order, 204 of 1977 (sic 1971), a Junior Warrant Officer has been detailed for over all supervision of the canteen as Canteen Manager. The appeal of the applicant was duly considered and the competent

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authority found it to be devoid of any merits. The grounds raised in the Original Application have been generally denied. A rejoinder to the reply has been filed on behalf of the applicant, almost reiterating the facts and grounds with some elaboration of law, as indicated in the pleadings of the applicant and also the facts and grounds mentioned in the reply have been generally refuted. The new terms and conditions of URC employees issued on 14.9.2001 have also been annexed as Annexure A-12.

6. The learned counsel for the applicant has reiterated the facts and grounds pleaded on behalf of the applicant as noticed above. He has made us to traverse through various documents specially para 2, 4 and 24 of the conditions. He has laid great stress on the point that except at one occasion, the applicant was not issued with any warning letter; rather he has been working quite satisfactorily for a period of over 2 years without any break. He has also submitted that the impugned termination order does not indicate that services of the applicant have been terminated on account of any unsatisfactory performance. Even the rule 2 prescribed for extension of probation period, upto a certain extent and thereafter it only says that confirmation would be done by through a specific written order and not that one's service can be terminated under section 2 read with section 4 of the Conditions. He has also made some effort to make his submissions regarding the un-constitutionality of the section 4 of the Terms and Conditions of Service of URC employees. He next contended that the applicant was after all a government servant and his services cannot be put to an end in the manner the respondents have done on the pretext that his services are no longer required. He has also cited certain authorities relating to termination of a probation on the ground of unsatisfactory work but they are not relevant in view



of out findings on the facts. Therefore, the Original Application deserves to be allowed and the applicant be granted all the consequential benefit, as prayed for in this Original Application.

7. On the other hand the learned counsel for the respondents has submitted that under rule 24 of the "Conditions" empowers the competent authority to terminate the services of any canteen employee without assigning any reason, whatsoever and by giving one month's notice in writing and pay in lieu thereof. He has submitted that the impugned order is well in consonance with the power conferred on the competent authority. He has next contended that the applicant was under the probation and his services were not satisfactory despite the fact that he was issued with a specific written warning for improving and since he did not improve, his services had to be terminated. He has submitted that charge was given to a Junior Warrant Officer, as per the provisions of para 4 (b) of AFO of 204/1977, as has been elaborately discussed in the reply. He made us to traverse through the various documents involved in this case. He also submitted that as per para 36 (b) of Chapter I, of IAP 3503, an airman can be employed to work in non public fund organisation like that of Canteen.



8. It would be pertinent to mention here that on an earlier occasions the respondents were directed to make available certain informations relating to the conditions of service, if any framed, in accordance with the directions of the Apex Court in case of **Union of India & Others Vs. Mohd. Aslam & Others**, reported in 2001 SCC (L&S), Page 302. Further, he was also asked to submit the details as regards the recruitment rules, as well as the pay scale for the post of Canteen Manager indicating clearly the eligibility conditions and the educational

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qualifications. Further he was also asked to submit the details of deployment of uniformed personnel in the Canteen. He has very fairly submitted the information regarding the deployment of the Uniformed Personnel in Canteen and submitted a list of six uniform personnel presently employed in the URC in question. He has however expressed frankly that no recruitment rules or instructions have been issued in respect of the any of the post, least to say about the Canteen Manager post in URCs. He has also similarly replied that the only the conditions were prescribed in 2001 with some amendments until 2003. After nullifying the same and assuming them as void by the Apex Court in the case of **Dharmanand Vs. Union of India & Others**, 2004 SCC (L&S) 1034, no further rules or condition of service in respect of URCs have been framed and they are being paid only in the minimum of the scale of the pay without anything more (not even the usual allowances such as DA or HRA), corresponding to the pay scale payable to the employing holding the corresponding posts in CSDs.



9. There was yet another query regarding the SRO. – It was enquired as to whether the SRO is a public document and can it be used for notifying the vacancies in the manner it is required for making public appointments ? It was reluctantly answered that it is not a public document; rather it is a restricted document and not a media for notifying the vacancies for such employment. Anxiety was also shown as to how many people applied for the same and considered for by the Board of Officers. Both the parties maintained pin drop silence on the same and the respondents also did not find it convenient to produce the relevant record, which would have in fact supported their case. However, it was also submitted that some SLP is pending adjudication before a larger bench regarding the law laid down in the

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Aslam's case supra; details were intended to be given but the same seems to have been withheld.

10. We have anxiously considered the rival submissions put forth on behalf of both the contesting parties. As far as a factual aspect of the case is concerned, it is a fact that some notification was issued in the SRO and in pursuance of which the applicant had applied. He was selected by a Board of officers and given appointment on probation for a period of one year in terms of conditions, then in existence. His probation was extended from time to time and last extension was upto 30th September 2001. The termination order contains the reason that applicant's services are no longer required. Hence his services were terminated as per rule 24. Admittedly, the charge of post was given to 5th respondent, JWO Surender Mohan, an uniformed personnel. In other words, the reason of applicant's termination as unsatisfactory working is supplemented through the reply and also the rule 24 does not provide for termination on the ground of un-satisfactory work, rather it provides for termination of service by giving one month's notice in writing or one month's pay in lieu thereof, without assigning any reason thereof.



11. Now we advert to the various issues involved in this case. The first issue involved in the instant case regarding the validity of very impugned termination order issued in respect of the applicant. The Hon'ble Apex Court in the constitutional bench judgment in case of **Mohinder Singh Gill Vs. Chief Election Commissioner, Punjab**, AIR 1978 SC 851, have held in unequivocal terms that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or



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otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. In the instant case, the bare reading of the termination order indicates that his services have been terminated on the ground that same are no longer required. We take a judicial notice of one of the recent judgment of the Apex Court in the case of **Dharmanand** (supra) wherein their Lordships were dealing with the identical controversy relating to termination of an URC employee and the contents of the relevant portion from the judgment are self explanatory and therefore, extracted as under:

"The aforesaid rules have been framed as if they were not Government servants. The decision quoted above would show that the canteen employees should have been treated as Government servants. That by itself is sufficient to hold that the rules framed for such temporary appointment are not to be applicable to these employees."

We are of the view that if these petitioners should have been treated as Government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service that it was only for 5 years tenure and their services were no longer required. We hold that termination was illegal and petitioners are entitled to be re-instated in service forthwith".



In view of the aforesaid proposition of law, the impugned termination order cannot stand the scrutiny of law. We are fortified of our view from a celebrated constitution bench judgment of the Apex Court in case of **Moti Ram Deka Etc. V. General Manager, N.E.F. Railways, Maligaon, Pandu, Etc.** AIR 1964 SC 600, wherein their Lordships were dealing with similar provisions of terminating services of Railway Employees by giving notice for specified period without assigning any reason and it was held Indian Railway Establishment Code, Vol. 1, Rules 148(3) and 149(3) - Termination of services of a permanent servant: it is in the nature of a penalty and amounts to removal; if such a termination is brought about by r. 148(3) or r.

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149(3), the rule clearly contravenes art. 311(2) and must be held to be invalid.

11.A. We frankly confess that we are little dismayed that despite holding the termination order as invalid, it would not be possible to grant any substantial relief e.g. reinstatement in service etc. to the applicant. We are of the opinion that the appointment of the applicant as a canteen manager was de hors the rules in as much there was practically no promulgation of the vacancies and those who might have been eligible to compete were deprived of their right enshrined under Article 16 of the Constitution. SRO is not a public notice and it surprises us as to how the applicant came to know of the same once he retired from service. No details as to who else applied for the same are forthcoming. It can be easily discerned from the circumstances that applicant might be yes man of the officer in power and called for appointment. When another officer came, he might have thought to induct his yes man. No right accrues to such employees in view of the recent constitution bench judgment of Apex court in case of **Secretary State of Karnatka V. Umadevi** (3) 2006 SCC (L&S) page 753. In any case the law of promulgation of vacancies in case of public employments is fairly settled by the Apex Court in case of **Excise Superintendent Malkapatnama, Krishna District, A.P. v. K.B.N. Visweswara Rao & others** [1996 (6) Scale 670]. The Hon'ble Apex Court held as under:

"It should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or Undertaking or Establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and Employment News Bulletins and then consider the cases of all the candidates who have applied."



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12. The bare perusal of the chart showing the deployment and assignment of duties to the six uniform personnel (a copy is directed to be placed on records of this case), reveals that all the six persons are deployed for full time basis like other civilian employees. There is no post like that of JWO i/c and as per AFO 204/77 as well as chapter 6 of IAP 3503, there shall be an officer in charge who is intended to be a commissioned officer. Para 36 of chapter I of IAP 3503 also not support the defence version of the official respondents. The contents of the same are reproduced as under:

"Chapter-I
1 to 35 x x x

Employment of Non-Commissioned/Non-Gazetted/Civilian Staff

36. (a) x x x

(b) Civilian Government servants or airmen may be appointed by the Commanding officer of the unit for a period of one year to **work in their off duty hours**, when such a course is inescapable. Further extension may be approved by Air HQ/Command HQrs, as applicable.

(c) x x x (emphasis ours)



Firstly, a separate chapter is provided to deal with the functioning and administration of Canteen and therefore the aforesaid provision has no application to the facts of this case. Secondly, the airmen can be detailed to work in their off duty hours and do not contemplate full time deployment as is being done in the instant case. The same is in clear defiance of the rules in force including the prohibition made vide AFO 204/77 as indicated in succeeding para.

13. The implications of AFO 204/77 were elaborately discussed by this bench of the Tribunal in case of **Rajendra Jagarwal and ors Vs. Union of India and Ors** 1996(1) ATJ 376 (CAT). The contents of relevant para 14 are reproduced as under:

"14. Having discussed the canteens case of the L.I.C. of India, we find that the facts and circumstances in the present case are totally identical with that of the LIC canteens. The Air Force and Army Canteens are non-statutory canteens run departmentally under the sanction of the Army / Air Hqrs. As per the Air Force Order No.204, dated 2.7.1977 sanction to run the canteen will be accorded subject to the conditions : -

i) The unit has on its strength the number of personnel not below 100 including the attached personnel;

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- ii) The units will not ask for any increase in their authorized establishment solely for the purpose of running the canteens.
- iii) No service personnel or free transport is to be used in the running of the canteens. In J&K Area, however, the use of free transport is permissible.
- iv) For overall supervision of the canteens, units are to detail an officer and also ensure that the accounts are audited as per the existing rule.

This very order details all the functions of the canteens and facilities which it provides to Army Personnel including their families. It also talks about the loans to be given to the canteens from CSDI. There is a warning in this order at para 14 wherein it says that, "There appears to be a growing tendency on the part of unit run canteen to engage themselves in trade independently with various suppliers of canteen goods, obviously with a view to making profits. This is clearly in violation of the orders. Certain cases of misuse of Forms C&D on which exemptions are granted under the Sales Tax Act have also come to notice. The URCs are exempted from Sales Tax being Govt. run canteen for the benefit of defence personnel only."

14. Now we would advert to ancillary significant aspect of the matter i.e. regarding the filling of the post of canteen manager. The contents of relevant para 3 of the chapter 6 of IAP 3503 itself makes the matter clear and the contents of the same are as under:

"Chapter-VI of IAP 3503

1. x x x
2. x x x
3. The overall supervision of the Canteen is the responsibility of the Commanding Officer of the Station, who may detail an Officer, as Officer i/c Canteen. The actual day to day management of the Canteen may be entrusted to a Civilian employed as Canteen Manager. In addition, Civilian Staff as necessary may be employed to perform the duties connected with the Station.
4. x x x"



As per the aforesaid provisions, the actual day-to-day management of the canteen is to be entrusted to a civilian employed as Canteen Manager. There is also a provision and powers have been given to the CO to detail an officer as officer in charge canteen. The same is in consonance with para 4(iv) of AFO 204/77. Deploying a JWO for overall supervision of canteen as canteen manager as mentioned in para 4.11 is indefensible and cannot be countenanced, being in contravention and repugnant to the specific written instructions as well as order issued by the CAS. At some places including the chart showing deployment of uniform personnel ibid, the word JWO i/c has been used but the facts remains that such person is

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deployed as full time canteen manager as indicated in their reply. In any case, a wrong label shall not change the contents of the container and we have no hesitation in holding that the official respondents are not adhering to the rule of law and have acted in an illegal and an arbitrary manner throwing the rules overboard.

15. Looking the aforesaid issued from yet another angle, the canteen employees are trained in the particular discipline and they are required to submit due securities since the financial transactions are involved. Any loss can be recovered from them. But no loss can be recovered from the uniform personnel since they can always plead ignorance and examples are not wanting where such situations have occurred in the past. They are also comparatively low paid in as much the uniform personnel get numerous facilities like free rations, free clothing, free accommodations and lot of expenditures are incurred extra on them. They are trained in particular trade/branch and would be expert in their field. If such experts are deployed on low paid jobs it would be against the principles of deployment of manpower that work has to be taken from an employee commensurate to the payment made from the consolidated fund of India (AIR 1988 SC page 78 refers).



16. Before parting with this order we have few notes of caution for the respondents. They should expeditiously frame the rules for regulating the terms and conditions of service of URC employees as per the direction of Apex court in case of Mohd Aslam's case. They should be treated as government servant in fact. Even a casual labour after grant of TS in government department is entitled to usual allowances like DA, HRA, CCA etc. but such allowances are not being paid to the employees of URCs despite that they are permanent government servants. There should be transparency as well

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predictability in the action of the authorities. We have taken judicial notice of some of the untoward incidents in the military organization and some of the officers/men committed even suicides due to tension and unfavourable conditions of service. The Hon'ble Defence Minister gave assurance that their conditions of services shall be improved. It would be expedient if the cases of canteen employees were also included in the said agenda.

17. In view of what has been said and discussed above, this Original Application is disposed of in the following terms:

"(i). The impugned termination order dated 27.10.2001 (A/6) is hereby quashed but with no other relief relating to reinstatement or consequential benefits.

(ii). The deployment of respondents No. 5 as canteen manager is also quashed. The respondents are directed to dispense with deploying uniform personnel in URCs and strictly adhere to the provisions made in Chapter 6 of IAP as well as the prohibition provided vide AFO 2004/77 keeping in view our observations made thereof.

(iii). This order shall be complied with within a period of two months from the date of receipt of copy of the same.

(iv). No costs."

Note: A copy this order may be directly sent, under seal and signature of the registry to the respondent No. 1 for their information and enabling them to take corrective steps.



R R Bhandari

(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik

(J K KAUSHIK)
JUDICIAL MEMBER

HC*

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for R. Bhatnagar
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