CENTRAL ADMINISTRATIVE TRIBUNAL

O. A. NOs 150, 151, 152, 153 & 154 OF 2008.
JODHPUR THIS IS THE 13th JANUARY, 2010.

CORAM :
HON'BLE DR. K.B. SURESH, MEMBER [J]
HON'BLE MR. V.K.KAPOOR, MEMBER [A]

Ram Kukh Rana S/o Shri Tulsa Ram, aged about 28 years, resident of Paharganj IIdn Lal Sagar, Mandor Road, Mandor Road, Kishore Bag, Jodhpur, at present employed on the post of Billing Clerk in Konark Canteen (CSD), Hqrs. 12 Corps C/o 56 APO.

OA No. 150/2008

Mrs. Sudha Yadav Wife of Shri Ausan Singh, aged about 40 years, resident of C/o Sh. Ratan Singh Sekhawat, H.No. 307, BJS Colony, Jodhpur, at present employed on the post of Salesman in Konark Canteen (CSD), Hqrs. 12 Corps C/o 56 APO.

OA No. 151/2008

Hendrich 'D' Costa S/o Shri A.M. Costa, aged about 33 years, resident of C/o Jaswar Khan, H. No. 267, Mohan 'B' Nagar, Near Railway Crossing, BJS Colony, Jodhpur, at present employed on the post of Salesman in Konark Canteen (CSD), Hqrs. 12 Corps C/o 56 APO.

OA NO. 152/2008

Rajesh Patel S/o Shri B.R. Patel, aged about 37 years, resident of H.No. 56, Gandhi Colony, Bhagat Ki Kothi, Jodhpur, at present employed on the post of Salesman in Konark Canteen (CSD), Hqrs. 12 Corps. C/o 56 APO.

OA No. 153/2008

Hemant Kumar Sisodia S/o Shri Rohan Sigh Sisodia, aged about 33 years, resident of Plot No. 32, Balram Nagar, Banar Road, Jodhpur, at present employed on the post of Salesman in Konark Canteen (CSD), Hqrs 12 Corps C/o 56 APO.

OA No. 154/2008

.....APPLICANTS

[For Applicant : Mr. J.K. Mishra]

Vs.

1- Union of India through Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.

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2- General Officer Commanding-In-Chief, Hqrs. 12 Corps. C/o 56 APO.

3- The Chairman, Konark Canteen (CSD), Hrs. 12 Corps C/o 56 APO.

4- Quartermaster General Branch, Dy. Dte Gen. Canteen Services, Army Headquarters, L-Block, Room No. 16, Church Road, New Delhi.

RESPONDENTS,

[For Respondents : Mr. M. Godara proxy for Mr. Vineet Mathur,]

...

ORDER
[DR. K.B.SURESH, MEMBER (J)]

All these matters arise from the same issue and, therefore, they are being heard together. However, we take OA 151/2008 as the leading case.

2- Following the decision of this Tribunal, the matter went up to the level of Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgement reported in *Union of India and Ors. Vs. Mohd. Aslam and 5 Ors.*, reported in 2001 (1) SCC 720, had agreed with the findings of this Bench wherein, employees of the Unit Run Canteens are stipulated to be considered as equivalent to Government employees and it appears thereafter, the arrears of salary and other benefits were paid to such employees.

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3- It is also brought to our notice that a set of Rules regulating the terms and conditions of service of Civilian employees of Unit Run Canteen, were issued and which is in current use and is produced and which would state in Clause (5) that, "(a) All employees shall be under probation during the first year of service . On successful completion of probation, the employee will be termed as permanent. Service of any employees under probation are liable to be terminated by the employer if the employee was found unfit for performance of assigned duties. (b) All the employees who have completed one year probation period as on 04 Jan 2001 will be treated as permanent employees and (c) All employees whether under probation or permanent would be treated at par with Govt. servants employed in CSD as far as pay scale are concerned. The classification of employees and the pay scale is given in schedule 'A'.

In Clause (7) it states as follows :

"LETTER OF APPOINTMENT – A letter of appointment shall be issued in case of every fresh appointment."

In Clause (8) it states as follows :

"CERTIFICATE –
(a) Every employee before joining Unit Run Canteen shall be required to produce a certificate of medical fitness from registered medical practitioner that he is not suffering from any communicable or contagious disease. If a Service Medical Officer declares him to be suffering from any communicable or contagious disease, he shall not be employed notwithstanding the certificate of medical fitness given by registered medical practitioner. Such

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certificate should not be of a date 30 days prior to its production."

(b) Every employee before joining shall also be required to furnish certificate of good character from two gazetted officers or Members of Parliament / State Legislator / Corporation / Municipal Committee, who are not related to him. Such certificate should not be of the date 30 days prior to its production."

In Clause (9) it states as follows :

'SELECTION BOARD-
All recruitment of employee will be done by is selection board nominated by the appointing authority. Charter of duties of such appointment will be mentioned in the rules and regulations to be issued by such employer as mentioned in Rule 30".

In Clause (10) it states as follows ***:***

'POLICE VERIFICATION –
Employee joining the Unit Run Canteen shall be subject to satisfactory Police Verification."

In Clause (11) it states as follows :

'SECURITY –
An employee is to abide by all such orders on security as may be issued from time to time by the local authority where the canteen is located or relocated.

In Clauses (12 & 13) it state as follows :

"HOURS OF WORK AND CLOSED DAYS –
(a) Every employee shall be required to perform work for a period not more than 48 hours in the week as may be fixed by the appointing authority from time to time.

(b) One day per week shall be observed as holiday. In addition nine closed only holidays in the year will be observed as specified by the employer."

In Clauses (14) & (15) it state as follows ***:***

"SANCTION OF THE LEAVE – Of absence of any kind shall not be deemed to have been sanctioned unless its approval has been communicated by employer

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either verbally or in writing. The leave has to be sanctioned by a person appointed in this behalf by the appointing authority.

EXTENSION OF LEAVE – If an employee while on leave desires an extension thereof he shall apply sufficiently in advance before the expiry of the leave so that its approval or otherwise can be communicated to him before the leave already sanctioned expires. Extension of leave shall not be deemed to have been sanctioned unless the approval is actually communicated. The employee must report for duty in time when the leave already sanctioned expires unless it has been duly extended as stated above."

In Clause (18) it states as follows :

"18. WAGES :
(a) Minimum scale available to the employee in the CSD (I) will be granted to Unit Run Canteen employee. Accordingly the initial pay of employee shall be the pay as specified in Schedule 'A' to this rules. The employee shall be entitled to the increments as per the relevant pay scale mentioned in Schedule 'A' on annual basis and necessary sanction by the appointing authority.

(b) The monthly wages of employee shall be paid on working day between first and seventh day the following month.

(c) Where the employment of any person is terminated, the wages earned by him shall be paid subject to other condition of service.

(d) No pension will be admissible to an employee after retirement."

4- All these are necessary attributes of Government service in accordance with normal practice in Government service. Clauses 21, 22, 23, 24, 25, 26 and 27 are also in harmony with Government employment. The variation is only with regard to Clause 20 (a) and Clause 30, but, Clause 30 is applicable to Government servants as well in similar situation. It may be that in compliance with the

Aslam's judgement, from 1999 onwards, the same methodology is followed by the respondents.

But, thereafter, the Hon'ble Supreme Court of India in Civil appeal No. 3495 of 2005 - *R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Ors.,* heard on reference by a three Judges Bench, has held in its decision dated 28th April, 2009, that (a) The employees of Unit Run Canteens are not Government Servants and (b) After completion of the period, they might be declared as permanent employees but, they do not get the status of Government employees at any stage.

5- The respondents' have a case that following the decision rendered by the Hon'ble Apex Court in ***Uma Devi's case,*** it has been held that in case of illegal appointment, no relief can be extended, but, at the same time, it also laid down that in case of irregular appointment, if the appointments are made after adopting regular procedure then, the same can be regularized. But, then this contention of the respondents may not be correct as according to the applicant a notification of vacancies was published in the news paper, a Board of Officers conducted practical test and interview and a selection process was complied with.

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Applicant is a graduate and had with stood time and effectiveness in his employment. Besides, the Hon'ble Supreme Court has held in *Pillai's* case itself that such people can be deemed to be permanent employees. Clause 5 of the rules regulating the terms and conditions of service of Civilian employees of Unit Run Canteen, also clearly mentions that on completion of the probation, all such employees will be treated as permanent employees.

6- The grievance of the applicant is in regard to the time of employment which is extracted from her – 09.30 AM in the morning to 07.30 PM in the night, and that too, without any break. The Counsel for applicant would contend that this is nothing but an organized slavery as per the democratic policy of India and concept of Welfare State as is enshrined in the Directive State Policy, it cannot shoulder this unforgivable burden. It is open to the applicant to represent to the authorities that if such is the case requesting for their interference in the matter.

7- The Counsel for the respondents' brings to our notice the letter of appointment which says that the post is on an ad hoc basis and shall continue to be so. It also says that no gratuity will be given for the service rendered. It is

also brought to our notice that the Canteen Staff is not permitted to be member of a Trade Union. Quite obviously, the Draftsmen of this appointment letter has drawn inspiration from same is ultra vires. The post arising in the Canteen(s) may be ad hoc or contractual in nature but, having continued for the time as mentioned in the rules then, the Hon'ble Supreme Court, as has already held, that such employees will be treated as permanent. The question of gratuity is covered by the Gratuity Act and definitely, it will supersede any contractual obligations or stipulations on either on the part of the applicant or on the part of the respondents. The Trade Union Act of 1926 is a self-contained legislation but, with a rider that it is not applicable to Government servants. If the case of the respondents is that applicant and others like them, are not Government servants then quite obviously, the respondents cannot deny the right of collective bargaining to them.

8- Legal stipulations and niceties are not to be used as an engine of oppression. While the matter of being or not being a Government servant is already settled. The other matters would remain un-attended. At this juncture, the non-maintainability of the OA in view of the decision of the Hon'ble Supreme Court is brought to our notice. But, the

Hon'ble Supreme Court in ***Dharmanand Vs. Union of India*** reported in 2004 SCC (L&S) 1034 held that an employee of a Unit Run Canteen cannot be terminated on 'Will and Pleasure'. The ***Aslam's*** case has held them to be Government employees and, therefore, to cite an analogy, a dismissed Government employee on its dismissal cease to be a Government servant, but, he is entitled to approach the Administrative Tribunal for relief. A prospective employee who is denied appointment can approach to Tribunal for relief. Therefore, we hold that the O.A. is maintainable and, therefore, the following principles have evolved out of the situation :

a) The rules as produced are applicable to the applicant as well as the respondents.

b) The applicant is a permanent employee but is entitled to the protection of statutes like statute governing collective bargaining, gratuity and all other employment benefits as if for equivocally placed employee by virtue of Article 14 of the Constitution of India.

9- The respondents have a bounden duty to fix the period of employment of each day in pursuance with the statutory formations in vogue.

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10- In view of the unequivocal findings of the Hon'ble Apex Court in ***Pillai's*** case the request of the applicant to be considered as a Government servant is negatived. But, at the same time, we feel that a fresh look is required into this matter at the level of policy makers in the Government. Organised slavery is anathema to the concept of Welfare State. The legal provisions shall not be engines of oppression. The actions of the Government must be pervaded with equity and fairness. The Registry is directed to forward a copy of this judgement to the Secretary of Defence for him to formulate an appropriate formula to prevent the mis-use and abuse of human labour. Since the plea of applicant with regard to her claim of being a Government servant is negatived, the O.A. is dismissed but with no orders as to costs.

[V.K.Kapoor]AM

[Dr.K.B.Suresh]JM

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दिनांक 17/12/15 के आदेशानुसार
प्रेषित [illegible] में क्रियांक 9/246
को भाग-II [illegible]

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक न्यायाधिकरण
जोधपुर न्यायपीठ, जोधपुर

18/1/16