

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 106/2013

Jodhpur, this the 13th day of February, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Lalit Malodia s/o Late Sh. R.N.Sharma, aged 40 years, r/o 32, Laxmi Nagar, Paota "C" Road, Jodhpur (Raj.), presently working as STA "B", Defence Laboratory, Jodhpur.

.....Applicant

By Advocate: Mr K.K.Shah

Versus

1. The Union of India through the Director General, Research and Development, Defence Research and Development Organization, Ministry of Defence, DRDO Bhawan, New Delhi.
2. The Director, Defence Laboratory, Ratanada, Jodhpur

.....Respondents

By Advocate : Ms. K. Parveen

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present OA has been filed by the applicant challenging the order dated 27th February, 2013 which was communicated to him vide order dated 13th March, 2013 (Ann.A/1) whereby in terms of Rule 11 (iv) of CCS (CCA) Rules, 1965 penalty of withholding of increments of pay for one year has been imposed on the applicant and therefore, the applicant has prayed for the following reliefs:-

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"In view of above submissions, the applicant most respectfully prays that this original application may kindly be allowed with costs and by issuance of an appropriate order or direction the impugned order annex. A/1 dated 22.02.2013 (sic) (communicated vide letter dt. 13.03.13) may kindly be quashed and set aside. It is further prayed that it may be declared that the applicant is not amenable to the jurisdiction under CCS (CCA) Rules, 1965 for the working as temporary employee of URC and the applicant may kindly be allowed all the consequential benefits including the promotion etc. which is pending since 2009.

Any other order favourable to the applicant may also kindly be passed."

2. Short facts, as stated by the applicant are that the applicant initially challenged issuance of charge sheet dated 25.8.2009 under CCS (CCA) Rules, 965 before this Tribunal by filing OA No.220/2009 and this Tribunal vide order dated 6.5.2011 allowed the OA and quashed the chargesheet. Against the findings of this Tribunal, the applicant filed D.B. Civil Writ Petition No.730/2012 and the respondent department also filed D.B. Civil Writ Petition No.7348/2011 before the Hon'ble Rajasthan High Court. Vide order dated 14.3.2012, the Writ Petition No.7348/2011 was allowed and the order of this Tribunal was set aside with direction that the Inquiry Officer should conclude the inquiry against the applicant within three months in accordance with the rules and submit report to the appointing authority for passing appropriate orders on the basis of the inquiry report. After decision in the Writ Petition No.7348/11, the Writ Petition No.730/12 filed by the applicant was rendered infructuous vide order dated 3.5.2012, however, the question of amenability under Article 12 of the Constitution was left open to be agitated before the appropriate forum. With the liberty given by Hon'ble High Court to raise his grievance in appropriate proceedings, the applicant submitted representation dated 17.5.2012 (Ann.A/10) but till date the vital

issue has not been decided and the proceedings continued under CCS (CCA) Rules. Hence, the applicant has filed this OA praying for the reliefs as extracted in para-1 above,

The applicant averred that there is no canteen run by any of the defence establishment which can be termed as CSD canteen. In fact, all the canteens run by various units and establishments are termed as Unit Run Canteen (URC). It has been further stated that the URC is not paid anything by CSD, however, CSD may give loan to it on interest but the profit of URC are neither credited to the Government nor Government shares the losses. In various units, the URCs are called CSD canteens which is a misnomer as CSD is a Depot and not a canteen. All its employees are Govt. employees and funds of this Department forms part of the Consolidated Fund of India and are thus Government funds. On the other hand, the URCs are private undertakings of the units concerned and their funds are non-Government funds. Thus, on the basis of wrong terminology, the applicant was issued chargesheet dated 25.8.2009.

3. By way of filing reply to the OA, the respondents have submitted that the Defence Laboratory, Jodhpur (DLJ) is having a CSD canteen to cater the needs of employees of DLJ and their families and the URC is amenable to jurisdiction under Article 12 of the Constitution and hence the CCS (CCA) Rules, 1965 are applicable in the instant case. The respondents have further submitted that the duty of Manager, CSD canteen is a bona-fide Govt. duty and the present case involves gross negligence in performance of duties assigned to the applicant by the employer, which resulted shortage of stock of the DLJ CSD canteen by Rs. 63,130/-. The disciplinary action against the applicant has been initiated for the misconduct while performing the duties

of Manager, CSD Canteen assigned to him vide DO Part I S.No.139 dated 9.9.2008.

4. The applicant has filed rejoinder reiterating the facts as averred in the OA and the respondents have filed additional affidavit.

5. Heard both the parties. Counsel for the applicant contended that the applicant is not amenable to the CCS (CCA) Rules, 1965 because he was working as Manager, URC and employees of the URC are not considered as public servants, therefore, departmental proceedings cannot be initiated against the applicant. He further contended that earlier by OA No.220/2009 issuance of chargesheet was challenged by the present applicant and the same was allowed by this Tribunal, but against the judgment of this Tribunal the applicant as well as the Union of India filed separate Writ Petitions. The Writ Petition filed by the Union of India was allowed and order of this Tribunal quashing the charge sheet was set-aside by the Division Bench of the Hon'ble High Court. In the said Writ Petition, the Division Bench held as under:-

“In view of foregoing discussion, the writ petition succeeds and is allowed. The impugned order is set aside. As a consequence, we direct the Inquiry Officer to conclude the departmental inquiry in question initiated against the respondent within three months strictly in accordance with law. i.e. as per rules and submit the report to the appointing authority for passing appropriate orders on the basis of inquiry report.”

The Hon'ble High Court has rendered the Writ Petition No.730/2012 as infructuous but observed that “Counsel for the petitioner has submitted that the question whether the CSD canteen is State or not be left open. Since the impugned order passed by the Tribunal itself has already been set aside, obviously the question is left open to be agitated in appropriate proceedings.”

Counsel for the applicant further contended that the applicant just after this decision represented to the Inquiry Officer that as the applicant was working as Manager of the URC and employees of the URC are not public servants, but the competent authority failed to consider the representation of the applicant and imposed penalty. The counsel for the applicant contended that the simple question involved in this OA is whether the employees working in URC are amenable to CCS (CCA) Rules, 1965 or not and relied upon the judgment of the Hon'ble Apex Court in the case of R.R.Pillai (Dead) through L.Rs. vs. Commanding Officer HQ S.A.C. (U), & Ors. reported in 2009 (3) ALSLJ 227 wherein the Hon'ble Apex Court held as under:-

“Unit Run Canteen-Statue of, “Rules Regulating the Terms and Conditions of Service of Civilian Employees of Air force Unit Run Canteen paid out of Non-Public Fund”-Rule 24-Question whether view of SC in Mohd. Aslam’s case showing employees of Unit run Canteens as Government employees is correct-Found the URC is not paid anything by CSD, its buy goods from CSD on payment, CSD may give loan to it on interest, its profits are not credited to Government nor government shares its losses, UDC can borrow from others-So the view given in Mohd. Aslam case is not correct.”

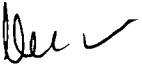
After relying on the aforesaid judgment, the learned counsel contended that in view of the judgment of the Hon'ble Supreme Court, the punishment passed against the applicant cannot be sustained and the applicant is essentially required to be exonerated.

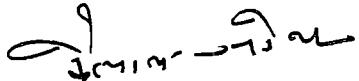
6. Per contra, counsel for the respondents contended that originally the applicant is working as STA-B in the Defence Laboratory, Jodhpur and he has been assigned duties of the Canteen Manager in addition to his normal duties in the Lab. The counsel for the respondents further contended that monthly stock taking is done in the canteen and during the stock taking for the month of April, 2009 some deficiency in the stock were found, therefore,

a departmental committee was constituted and the committee found the applicant guilty of charge of shortage of stock. Counsel for the respondents further contended that the applicant was assigned duties of Officer Incharge, CSD Canteen vide DO Part-I Srl.No.139 dated 9.9.2008 and the applicant while working as public servant committed misconduct, therefore he is amenable to CCS (CCA) Rules, 1965.

7. We have considered rival contention of both the parties and perused the judgment of the Hon'ble Apex Court in the case of R.R. Pillai (supra). In the case cited supra, Shri R.R.Pillai was a retired Air Force staff and after his premature retirement he was engaged in URC. Therefore, in that case, the Hon'ble Apex Court held that the appellant cannot be said to be a public servant but in the present case, the applicant was employed as STA-B in the Defence Laboratory, Jodhpur and he was assigned additional duties of Manager, URC and for that he is being paid honorarium separately, therefore, the facts of the instant case are different from the case as cited by the counsel for the applicant, and in our considered view, the employees of the Defence Laboratory, Jodhpur are amenable to CCS (CCA) Rules, 1965.

8. Therefore, the order passed by the respondent department does not require any interference in this OA by this Tribunal and accordingly the OA is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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