CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.499/2001

Friday...this the 21st day of March, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

C.A.Fermas,
Salesman (now under termination)
Unit Canteen,
INS Dronacharya
Fort Kochi residing at
Chaliyachan Veedu
St.John Pattom
Fort Kochi. ....Applicant

(By Advocate M/s Santhosh and Rajan)

V.

1. The Commanding Officer,
INS Dronacharya, Fort Kochi
Kochi.

2. Flag Officer Commanding in Chief
Headquarters,
Southern Naval Command,
Kochi.4.

3. Union of India, represented by the
Secretary to Government,
Ministry of Defence,
New Delhi. ...Respondents

(By Advocate Mr. C.Rajendran, SCGSC)

The application having been heard on 7.2.2003, the Tribunal on 21.3.2003 delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was working as a Salesman in the Unit-run Canteen, INS Dronacharya has filed this application challenging the orders dated 2.2.1999 (A3) of the Ist respondent placing him under suspension and the order dated 13.3.1999 (A4) of the Ist respondent terminating his services with effect from 2.2.1999.

2. The material allegations in the application are as follows. The applicant was initially appointed as a Labourer in the Unit-run Canteen under the Ist respondent after a due selection in the year 1984. Thereafter by Annexure.A2 order dated 30.12.89 he was promoted to the grade of Salesman in the pay scale Rs. 370-10-380-15-410-20-610 with effect from Ist January, 1990. While he was continuing as a Salesman on 2.2.99 he was served with A.3. order of suspension. Reason for the suspension stated was that discrepancies were observed during the monthly stock taking for the month of January, 1999. Shortly thereafter Annexure.A4 order was issued terminating the services without assigning any reason. The applicant submitted a representation Annexure.A5 stating that he has not been responsible for any discrepancy and seeking to cancel the orders of suspension and termination. Finding no response he made another representation (A6) to the second respondent on 17.7.99 praying for immediate reinstatement with backwages. Finding no response he followed it up with another representation (A7) dated 16.10.99. Since the representations remained not responded to and he was not informed of the reason for suspension or termination of his services the applicant has filed this application seeking to set aside Annexures A3 and A4 declaring that the termination of the services as illegal and for a direction to the respondents 1&2 to reinstate the applicant with full consequential benefits such as continuity in services, backwages etc. The applicant had

earlier approached the Hon'ble High Court of Kerala finding that the Hon'ble Supreme Court has in Union of India and others Vs. M.Aslam and others reported in 2001 (1) SCC 720 held that employees in the Unit run canteen of the Army, Navy and Air Force are government servants withdrew the OP filed before the High Court of Kerala with liberty to move this Tribunal.

3. The respondents in their reply statement contend that the applicant having not been appointed on a regular basis to any government service but has been appointed only on contract basis for service in the Unit-run Canteen which is run with the aid of non public fund, the Tribunal does not have the jurisdiction to entertain this application. The respondents also while conceding that the Apex Court has held in the decision cited in the Original Application that the employees of the Unit-run Canteen are government servants, contend that the dictum is not applicable to the applicant as he has been engaged only on a contract basis. They further contend that the applicant was placed under suspension and his services were terminated as certain discrepancies were found. Since all the service conditions of the Government Servants are not applicable to the employees of the Unit-run Canteen as has been observed by the Hon'ble Supreme Court in its judgment dated 4.1.01 the respondents are not bound to reply to any of the representations nor is the applicant entitled to seek relief against the impugned orders, contend the respondents.

4. We have carefully gone through the pleadings and materials placed on record. From the pleadings and the orders at Annexure.A1 and A2 it is borne out that the applicant was appointed initially as a Mazdoor and later promoted as a Salesman in the Unit-run Canteen under the Ist respondent. Therefore, the contention that the applicant was not regularly appointed in the Canteen but was only a contract employee has no force at all. The learned counsel of the applicant argued that the applicant having been appointed by the competent authority under the Ist respondent and having continued in service more than 15 years it is idle for the respondents to contend that the applicant is not a Government servant and that the Tribunal has no jurisdiction to entertain the application. He referred us to the ruling of the Apex Court in Union of India and others Vs. Aslam and others reported in 2001(1) SCC 720. The Apex Court was considering the question whether the employees of the Unit Run Canteen of Army, Navy and Air Force had the status of Government servants. On behalf of the Government it was contended that the employees of the Unit Run canteen not being paid salary out of the consolidated fund of India, they cannot be treated as Government servants. The Apex Court considered these contentions. Applying the principles enunciated by the Apex Court in Parimal Chandra Raha Vs. LIC of India, 1995 Sup.2 SCC 611, the Apex Court held as follows:

"Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-run Canteens can be held to be not government servants, when it has emerged that providing canteen facilities to the defence service personnel is obligatory on the part of the Government and, in fact, thee Unit-run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr.Goswami, the learned Senior Counsel appearing for the Union of India strongly relied upon the judgment of this court in Union of India Vs.Chotelal (1999) 1 SCC 554 wherein the question for consideration was whether dhobis appointed to wash the clothes of cadets at NDA at Khadkwasla, who are being paid from the regimental fund, could be treated as holders of civil post within the he Ministry of Defence. This Court answered in the negative because the regimental fund was held not to be a public fund as defined in para 802 of the Defence Services Regulation. Payment to such dhobis out of the regimental fund and the character of that regimental fund was the determinative factor. But in the he case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit run Canteens then the employees who discharge the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the defence services have all pervasive control over the Unit run Canteens as well as the employees serving therein. A regular set of rules have been framed determining the service conditions of the employees in the Unit run Canteens. The funding of articles are provided by Canteen Stores Department which itself is a part of the Ministry of Defence. The report of a Committee of Subordinate Legislation went into detail of the working conditions of the employees engaged in the Unit run Canteens and categorically came to the conclusion that these employees are recruited, controlled and supervised by the rules and regulations made by the defence services although these have been given the name of executive instructions. The said Committee came to the conclusion that for all intents and purposes the employees in the Unit run Canteens are government employees and should be treated as such. In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit run Canteens must be held to be that of a Government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions

of the Administrative Tribunals Act. Civil Appeals Nos. 1039-40 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Bench in OA No. 86 of 1995 accordingly stand dismissed."

In view of the above observations of their Lordships of the Apex Court the contention of the respondents that the application is not maintainable before this Tribunal as the applicant an ex-employee of the Unit-run Canteen cannot be considered as a Government Servant is only to be rejected.

5. The next question to be considered is whether the impugned orders Annexures.A3 and A4 ie., one placing the applicant under suspension and the other terminating the services of the applicant with effect from 2nd February, 1999 are sustainable. In the order of suspension (A3) what was stated is that some discrepancies were observed during stock taking and investigation was being made. It has not been stated that it was suspected that the applicant had been responsible for any loss or discrepancies. In Annexure.A4 order of termination of service no reason at all has been mentioned. The learned counsel of the applicant with considerable vehemence and tenacity argued that the impugned orders are totally arbitrary, irrational and legally unsustainable for they have been passed in total disregard of all cannons of law, equity and justice without even informing the applicant as to how he deserved such action.

6. Learned counsel of the respondents on the other hand argued that even though by reason of the ruling of the Apex Court in Aslam's case (supra) the applicant can be said to

be a Government servant all the rules, regulations and service conditions and fundamental rules as applicable to the Central Government employees not being applicable to the applicant the termination of the services of the applicant does not suffer from violation of any rules. To buttress this argument the learned counsel referred us to the observations of the Apex Court in paragraph 4 of the judgment in Aslam's case which reads as follows:

> "4.....As already stated, we have come to the conclusion about the status of the employees serving in the he 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 servants or even their counterparts 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 the service conditions of the employees of such Unit-run Canteens. In this view of the matter, the direction of the Tribunal that the employees of the Unit-run Canteens should be given all the benefits including the retiral benefits of regular Government servants cannot be sustained and we accordingly, set aside that part of the direction."

7. We find absolutely no force in the above argument of the learned counsel of the respondents. Although the fundamental rules in its entirety and the service conditions of the other Central Government Employees would not in all respect apply to the employees of the Unit-run Canteen their conditions are to be regulated by instructions issued by the department. It is well settled by now that termination of service of an employee for a misconduct can be made only

after informing him of the misconduct and giving him an opportunity to be heard. Even if the Fundamental Rules and Rules of Procedure applicable to the Central Government employees may not in all respects only to the employees of the Unit-run Canteen since they have been held to be government servants before terminating the service of such an employee he should be informed of the charges and given a reasonable opportunity of being heard. The respondents therefore, cannot throw an employee like the applicant out of job, without establishing his guilty in an enquiry in conformity with the principles of natural justice after informing him of his misconduct or short-comings. Even in spite of repeated representations by the applicant to inform him of his misconduct or short comings if any, the respondents did not afford him any opportunity and did not even tell him how he deserved a termination of service. Even in the reply statement it has not been stated that the applicant has been guilty of any misconduct specifically apart from vaguely stating that investigation showed that the applicant was involved in discrepancies. What was the discrepancy and what was the involvement of the applicant in it was not stated even in the reply statement. We, therefore, find that there was no justifiable reason for suspension of the applicant and the order of Termination without any valid reason and without establishing any misconduct on the part of the applicant is arbitrary, irrational, opposed to all known norms of equity and good conscience and therefore unsustainable.

7. In the light of what is stated above, the application is allowed, the impugned orders are set aside and the respondents are directed to reinstate the applicant in service and to pay him full backwages for the period for which he was kept out of service. The above direction shall be complied with by the respondents as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Dated this the 21st day of March, 2003

T.N.T. NAYAR
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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