

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 215/2001

Thursday, this the 26th day of September, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

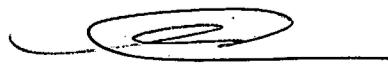
Shri R.R. Pillai,
C-8, Velloor, Panicker's Lane,
Sasthamangalam, Thiruvanthapuram - 10,
Previously worked as Manager, Air Force Canteen,
Thiruvananthapuram.

..Applicant

[By Advocate Mr. Thottathil B. Radhakrishnan]

Vs.

1. Commanding Officer, HQ Southern Air Command (U),
A F Akkulam, Thiruvananthapuram - 695 031
2. Wing Commander MJK Thampi, Commanding Officer,
HQ Southern Air Command (U), AF, Akkulam,
Thiruvananthapuram - 695 031
3. Director of Organisation, Air Headquarters,
New Delhi.



4. Union of India represented by the Secretary to the Government of India in the Ministry of Defence, New Delhi.

... Respondents

[By Advocate Mrs. S. Chithra, ACGSC]

The application having been heard on 16.07.2002, the Tribunal on Friday, the 27th September, 2002, delivered the following:

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant was recruited as Airman to the Indian Air Force in 1967 and discharged in the year 1988 while he was working as Junior Warrant Officer. It is stated that the applicant was also looking after the affairs of the Southern Air Command Unit Canteen in addition to his primary duties as Senior Non Commissioned Officer. The professional competence and acumen of the applicant had earned him commendations from his superiors. Annexure A-1 dated 30.09.1987 is the true copy of the certificate issued by the Air Officer Commanding-in-Chief of the Southern Air Command. The applicant was engaged as Manager of the said Canteen on a honorarium of Rs. 1,000/- per month with effect from 1.11.88 and subsequently, he was appointed on regular basis on 01.02.89 vide Annexure A/3 order dated 09.01.89. His services were confirmed on 4.5.89 vide Annexure A/4 order. During his services as Canteen Managers, appreciation letters were issued to



him by his superior officers, which are Annexures A/5 to A/8. The second respondent became the Commanding Officer of Southern Air Command Unit. In 1999, he caused the issuance of a notice, without proper publication, for appointment to the post of Assistant Manager-Cum-Accountant in the Canteen. The said notice was affixed only in the office notice board of the Southern Air Command and the Canteen. It is stated that the second respondent in colourable exercise of power, appointed his father's brother's son, namely Shri V.K. Sajith Kumar as Assistant Manager-cum-Accountant vide appointment order Annexure A/9 dated 14.10.99. The qualification prescribed in the notice was one that would suit to Shri V.K. Sajith Kumar. Annexure A/9(a) is the true copy of the said notice dated 28.9.99, which forms part of Unit's routine orders. Diploma in Co-operation is the qualification, which is not considered for appointment in any post in the Unit Run Canteens. Mr. Sajith Kumar is having this qualification.

2. It is stated in the O.A. that Shri V.K. Sajith Kumar reported for duty on 15.10.1999, which discloses the clandestine, tainted and unholy method of his recruitment. The incumbent was on probation for six months which as stated by the applicant, is contrary to the rules. As per rules, one year's probation is required. The true copy of the rules regulating the terms and conditions of service of the civilian employees of Air Force Unit Run Canteens, paid out out of 'Non-Public Funds', is Annexure A/10. Annexure A/11 dated 24.4.2000 is the order issued by the second respondent confirming the services of Mr. Sajith Kumar. It is contended by the learned counsel for the applicant that the appointment of Shri Sajith Kumar as Assistant Manager-cum-Accountant is illegal, arbitrary and mala fide. It is alleged that the second respondent with sole and oblique motive of making appointment of his cousin in the Canteen,



created some issues against the applicant to send him out of service. The second respondent issued a show cause notice to the applicant stating that a surplus stock of grocery item worth Rs. 35,858/- and a deficient stock of lesser amount, i.e. Rs. 29934/was found on a surprise check. Annexure A/12 is the true of the said notice. The applicant replied to the said show cause notice that he is not guilty of any intentional lapse and he pleaded pardon notwithstanding that the Stock-Incharge was directly responsible for any lapse. The reply filed by the applicant is Annexure A/13. Thereafter, the applicant was served with a warning issued by the second respondent, which is Annexure A/14 dated 14.12.99. When the applicant reported for duty on 31.05.2000, he was served with a communication dated 31.05.2000 signed by the second respondent as Commanding Officer, stating that his services were terminated with immediate effect in exercise of the powers as per Annexure A/10 terms and conditions. A true copy of the said order dated 31.05.2000 is filed as Annexure A/15. The applicant submits that the order Annexure A/15 is illegal, unreasonable, arbitrary and vitiated by bias and fraud on powers.

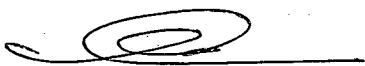
3. The applicant thereafter, filed O.P. No. 15980 of 2000 before Hon'ble High Court of Kerala, wherein by an interim order Annexure A/16 dated 7.6.2000, direction was given to retain the applicant in the post. Ultimately, vide judgement dated 21.06.2000 (Annexure A/17), Hon'ble High Court dismissed the aforesaid O.P. holding that High Court lacks jurisdiction to entertain the case. While so, Hon'ble Supreme Court in Civil Appeal Nos. 1039 and 1040 of 1999 held that the Unit Run Canteens are Central Government employees and that the Central Administrative Tribunal has jurisdiction over the disputes.



Accordingly, the Writ Application No. 1363/2000 was withdrawn and this O.A. was filed by the applicant, seeking following reliefs:

- "1) To declare Rule 24(1) Annexure A/10 as unconstitutional, void and inoperative;
- ii) to call for the records leading to Rule 24(1) of Annexure A/10 and quash the same;
- iii) to call for the records leading to the decision contained in Annexure A/15 and quash the same,
- iv) to grant all consequential benefits to the applicant,
- v) to award cost of this Original Application."

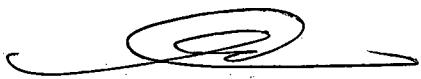
4. The respondents have filed detailed reply statement contending that the applicant sought premature retirement from the service on completion of 21 years, i.e., declined further extension his services and could have continued in Air Force Service upto the age of 55 years as per the policy prevalent in those days. It is also stated that whatever commendations/appreciations awarded to him during his services in Air Force, have no relevance to his present service. Commanding Officer of a Unit is the competent authority with whom the functional and administrative control is vested as per the policy and the terms and conditions of service in respect of Air Force Unit Run Canteen employees. The respondents further contended that the authorities had felt the necessity of creating a post of Assistant Manager-cum-Accountant keeping in view the daily increasing commitments of Unit Run Canteen and the applications from the eligible candidates were called through Unit's routine orders. A notice to this effect was also put up in the Air Force Notice Board. A Board of officers comprising of a Commissioned Officer and Warrant Officer was constituted and after scrutinising all the applications received, the Board of Officers recommended the name of Shri Sajith Kumar on the basis of merit



and, therefore, the respondents contended that proper procedure was followed for selection and appointment of Shri Sajith Kumar. The academic and technical qualifications of the selected candidate was properly matched taking into consideration the functional requirement of the Unit Run Canteen. It is submitted that the choice of qualifications of prospectus aspirant lies with the employer by taking into consideration the job enlargement and the expansion of diversified activities of the Unit Run Canteens. It is, therefore, urged that the averment of the applicant is totally mala fide and ill-conceived with a sole aim to tarnish the image of senior officers of the Defence Organisation for his selfish ends. There is no bias or nepotism in deciding the suitability of the candidate. It is further contended by the respondents that the petitioner has ipso facto no locus standi to challenge the credentials of the appointing procedure as there was no complaints from other aspirants. In the case of Shri Sajith Kumar, the appointment was confirmed after a period of six months though the terms and conditions specifies a minimum period of one year. It is stated that the Commanding Officer has all the rights to confirm the appointment at any time on the basis of the performance of the employee. The respondents further contended that the surprise check is a routine course of action in service by the independent officers to ascertain the actual dealings taking place during the particular period. This action on the part of the Commanding officer has no connection with the termination of his services as Manager. They submitted that there was no proposal to elevate Shri Sajith Kumar as Manager of the Unit Run Canteen on termination of the applicant's service on the said post, as alleged by the applicant. The Commanding officer had decided to do away with the paid managerial post and utilise the services of a serving Warrant Officer without any extra expenditure on Canteen funds. Accordingly, one Warrant Officer has been



appointed to look after the duties of the Manager of the Unit Run Canteen (URC, for short). It is stated that this involved no payment liability from the Canteen funds. Therefore, the respondents submitted that the termination of the services of the applicant is in conformity with the terms and conditions of his employment (Annexure A/3). Annexure R/2 is the terms and conditions of the URC employees. The termination of the applicant came into force with effect from 31.05.2000 and he was offered three months salary while terminating his services, which he refused to accept. As per the judgement of Hon'ble Supreme Court in Union of India vs. Mohd. Aslam, AIR 2001 SC 526, it would be open for the employer to frame separate terms and conditions and these terms and conditions has not been declared a unconstitutional by the Hon'ble Supreme Court. The respondents further submitted that the applicant is doing private business while serving as Manager in the Canteen, and his financial position is very sound. Therefore, he earned the chair of the President of Lions Club, Trivandrum. They contended that the publication of notice in the local newspaper was not at all aimed to tarnish the image of the applicant. It was felt necessary for the benefit of many civil agencies, who are having business dealings with the Unit Run Canteen through the applicant. They further submitted that the revision of pay of the petitioner had no relation with that of Pay Commission appointed by the Central Government. However, the pay of the employees working in different Organisations has been revised by the Unit Authorities keeping in view the cost of living. It is stated that the Canteen Authorities had not compelled the applicant to join the URC. He joined the URC on his own willing. The applicant is an Ex-Serviceman and is drawing service pension in addition to the income from the URC. Hence, the respondents contended that the allegation of the applicant that he is deprived of his livelihood, is untenable. There is no mala fide intention on the



part of the respondents in terminating the service of the applicant. They submitted that there is no merit in the O.A. and it deserves to be dismissed.

5. The applicant has filed a rejoinder reiterating the irregularity and mala fides on the part of the respondents and also produced a copy of the pay fixation proforma (Annexure A/20) issued by the Southern Air Command Canteen, Thiruvananthapuram. He submitted that the decision of the Apex Court in Union of India vs. M. Aslam (supra), is relevant only on the point that this Tribunal has jurisdiction to decide the application filed by the URC employees. The applicant does not base his claim to relief on fundamental rules, as has been erroneously assumed by the respondents.

6. Shri Thottathil B. Radhakrishnan, learned counsel for the applicant has taken us to various annexures and facts of the case and submitted that the action on the part of the respondents is wholly unfair, unreasonable, malafide and capricious. Accordingly, he prayed that the O.A. be allowed and the Annexures A/10 and A/15, which are faulted, deserve to be quashed and set aside.

7. Mrs. S. Chithra, ACGSC, appearing for the respondents submitted that there is no merit in the O.A. as all the allegations made in the O.A. are fictitious and without any bonafide. The action of the respondents in appointing Shri Sajith Kumar as Assistant Manager-cum-Accountant is in conformity with the law and procedure and, therefore, this O.A. does not have any merit and deserves to be dismissed.



8. We have given thoughtful consideration to the pleadings, arguments and the materials placed before us and gone through the same carefully.

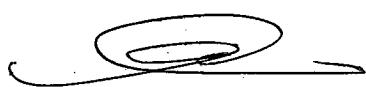
9. Initially, the applicant approached the Hon'ble High Court in O.P. No. 15980 of 2000, wherein the Hon'ble High Court considered the maintainability and held that on the strength of Ext. P.24, Unit Run Canteen at Headquarters of Air Commands are run under the control of Canteen Stores Department of the Defence Service. That Department is financing the Unit Run Canteen which is controlled by none other than the Commanding Officer of each Command and on the basis of working pattern, every Commanding Officer as and when he takes charge of the Headquarter shall take charge of the Unit Run Canteen as well. Thus, it is a part of the Organisation of the Air Force and is controlled by the Commanding Officer of the Air Force. Therefore, it cannot be stated that it is not a State within the purview of Article 12 of the Constitution. The petitioner has no case that he is not a civilian attached to the Organisation of the Air Force and directed the applicant to approach this Tribunal for appropriate remedy under Section 14 of the Administrative Tribunals Act, 1985, as the disputes in respect of service matters concerning civilians attached to Defence Service have to be resolved by the said Tribunal. Further, Hon'ble the Supreme Court in its decision reported in AIR 2001 SC 526, Union of India vs. M. Aslam and Others, has made it clear that the employees serving in the Unit Run Canteens could be treated as Government servants, but that does not necessarily mean that the service conditions of such employees are governed by the Fundamental Rules. There is no decision of the employer that the Fundamental Rules could be applicable to such employees. Further, in the operative portion of the judgement, their Lordships have made it clear that it would be open for the employer to frame separate conditions of



service of the employees or to adopt the Fundamental Rules. Since there is no decision of the employer that Fundamental Rules would be applicable to such employees, the Tribunal was not justified to direct that the question of payment of subsistence allowance should be reviewed in accordance with the provisions contained in the Fundamental Rules, and uphold the jurisdiction of the Tribunal to entertain the application filed by the employees serving in the Unit Run Canteens. Hon'ble Supreme Court further directed that the employees of the Unit Run Canteens will draw at the minimum of the regular scale of pay available to their counterparts in the CSDI and determine the service conditions of the employees in the Unit Run Canteens preferably within six months from the date of that judgement. Therefore, from the findings of Hon'ble Supreme Court (supra), the legal point that has been settled is that (i) this Tribunal has jurisdiction to entertain the application filed by the employees serving in Unit Run Canteen and (ii) the employees of the Unit Run Canteens are the Government servants. Fortunately, in this case, the terms and conditions of the service of the Air Force Unit Run Canteen employees have been formulated and implemented, which is Annexure A-10/Annexure R-2. For better appreciation, it would be worthwhile to reproduce the relevant portions of the terms and conditions, as under:

"Rule-1: Short Title, Commencement and Application-

These rules shall be called "The Rules regulating the terms and conditions of service of civilian employees of Air Force URCs paid out of Non-Public Funds" and shall come into force with immediate effect. These rules shall apply to all civilian employees of Air Force URCs paid out of Non-Public Fund Account but shall not be applicable to any person engaged on daily wages or on casual employment. These rules shall not be applicable to any Government employee, who may for the time being be detailed to work therein in any capacity whatsoever. These rules shall supersede all terms and conditions of service of canteen employees issued so far. For those employees who do not accept these rules, resignation from



service as per provisions of Rule 23 can be accepted. Only in case of dispute should cases be referred to this HQ.

Rule-2

Rule-3 : Appointment

(1) The appointing authority shall make all appointments.

(2) C Adm O/S Adm O shall be the appointing authority. However, at units, where establishment of C Adm O/S Adm O does not exist, the OC Unit shall be the appointing authority.

.....

Rule-4 : Probation Period

Every employee, on initial appointment to any post, shall be appointed on probation for a period of one year, which in appropriate cases, may be extended to two years. On completion of stipulated period of probation, an employee may be confirmed in his appointment by issuing a letter of confirmation, if his work as well as conduct, has been considered satisfactory. More completion of probation period shall not amount to automatic confirmation. Employees who have completed probation period but have not been confirmed, would still be deemed to be on probation until confirmed or their services dispensed with.

Rule-5 to Rule-15

Rule-16 : Rule of conduct-

(1) Every employee shall normally work under the direction and supervision of the Officer-In-Charge Air Force Canteen or any person authorised by him on his behalf and shall perform such duties connected with his employment, as may be assigned to him by the said officer or person. An employee shall not indulge, either directly or indirectly, in any trade, commerce or business activity, particularly in respect of any item sold in the URC so long as he is employed in the URC.

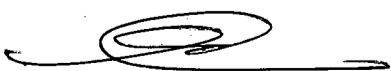
(2) Every employee shall be required to implicitly carry out all orders instructions etc. issued by the Officer Incharge Canteen or any other person placed over him

(3) Every employee shall at all times :-

- (a) Maintain absolute integrity,
- (b) Maintain devotion to duty,
- (c) Be courteous to his Supervisors and customers of the Canteen.

(4) Every employee holding a supervisory post shall take all responsible steps to ensure integrity and devotion to duty by all the employees, who for the time being may be placed under him.

Rule-17 : Act of Commission/Omission Constituting Misconduct



The following acts of commission/omission shall constitute misconduct:-

(a) Contravention of these rules or other issued from time to time.

(b) Any act/omission which constitutes an offence under any law for the time being in force in the Country.

Rule-18 : Suspension from Duty-

(1) Appointing authority or any authority to which it is subordinate, may place a URC employee under suspension in the following circumstances:-

(a) Where disciplinary proceeding against him is contemplated or is pending,

(b) Where, in the opinion of the aforesaid authority, he was engaged himself in activities prejudicial to the interest of the security of State, Air Force or the URC.

(c) Where a case against him in respect of any criminal offence is under investigation or inquiry or trial.

(2) ... (3) (4).... and (5)

Rule-19: Punishment for Misconduct.

(1) The appointing authority shall also be the disciplinary authority.

(2) Any employee who is found guilty of misconduct may be awarded any one or more of the following punishment by the disciplinary authority:-

(a) Censure

(b) Recovery from his pay and allowances, the whole or part of any pecuniary loss caused by him to the URC.

(c) Removal/dismissal from the service.

(d) Termination of service of casual employee in accordance with the terms and conditions of his employment.

(e) Termination of service during probationary period.

(f) Resignation/termination of service under Rule 23 or Rule 24.

Rule-20 : Procedure for dealing with case of misconduct-

Before awarding to an employee any of the punishments mentioned in Rule 19, the following procedure shall be followed by the disciplinary authority.



(a) The employee is to be served with a charge sheet, clearly stating the imputation of misconduct against him and calling upon him to show cause as to why one or more of the punishments included in these Rules should not be awarded to him.

(b) The reply to the charge sheet, if any, is to be duly considered by the disciplinary authority.

(c) If the employee so desires, he is to be heard in person and is also to be allowed to cross-examine witnesses against him or produce witnesses in his defence. The disciplinary procedure is laid down in Appendix 'A'.

Rule-21 and Rule-22

Rule-23 : Resignation-

(1) All employees may resign his post after giving one month's notice in writing or pay in lieu thereof to the appointing authority. The notice shall be effective from the date on which it is received by the appointing authority.

(2) The employee shall be liable to pay the salary for the period by which the said notice falls short of the time stipulated in sub-rule (1) above. This amount shall be computed according to the salary (i.e. pay and allowances) last drawn by the employee.

(3) The amount due from an employee under sub-rule (1) and (2) above may be adjusted against any sum due to the employee including balance of his salary, gratuity or security etc.

(4) The AOC/Station/Commander/CO may waive requirement of notice as mentioned in this rule either wholly or partly.

Rule-24: Termination of service-

(1) The appointing authority may terminate the services of an employee by giving one month's notice in writing or pay in lieu thereof without assigning any reasons.

(2) Nothing in sub-rule (1) shall apply to removal/dismissal for misconduct.

Rule-25

Rule-26 : Superannuation

(1) An employee shall be superannuated on attaining the age of 58 years. Yearly extension may be granted at the discretion of the appointing authority subject to medical fitness and proficiency in the job upto a maximum of 60 years of age.

(2)

Rule-27 to

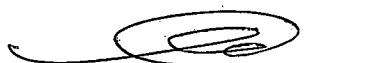
Rule-30

Rule-31 : This supersedes previous terms and conditions of Canteen Employees issued vide this HQ letter No. Air HQ/20728/P/Org dated 31 Jan 1984.



Disciplinary Procedure

1. All papers connected with the disciplinary proceedings shall be initiated and signed by the disciplinary authority.
2. Specific charges shall be communicated to the delinquent employee in writing to be replied by him within ten days of the letter communicating the charges.
3. The charges unless specifically admitted may be investigated either orally by the disciplinary authority himself or by a Board of Inquiry ordered by the disciplinary authority.
4. The delinquent employee shall be allowed a reasonable opportunity to defend himself.
5. If the delinquent employee does not attend the investigation/enquiry proceedings may be conducted in absentia and ex parte findings may be recorded.
6. The disciplinary authority will sign the order imposing the punishment."
10. Annexure A/15 dated 31.05.2000 is the order terminating the long standing services of the applicant with effect from 16.02.99 as Canteen Manager of Air Force Canteen, SAC Unit, and stated that he is eligible to receive compensation as per 'terms and conditions of employment of URC employees' vide letter dated 16.02.99. It is not in dispute between the parties the findings of Hon'ble Supreme Court mentioned supra and both the parties accept the terms and conditions Annexure A-1/Annexure R/2. The case of the applicant is that he has been working since 1988 and in 1989 he was absorbed as Part Time Manager and thereafter, he was appointed as Full Time Manager in Air Force Canteen Southern Air Command on probation of six months. He was also asked to furnish a fidelity bond of Rs. 10000/- before joining the duty and his age of superannuation has been fixed as 58 years as applicable to Non-Industrial Central Government Employees Group 'C'. Annual increments were granted in the years 1990, 1991 and 1992. Thereafter, he was promoted to the post of Office Superintendent Grade II and authorised to draw the pay scale Rs. 1400-40-1800-EB-50-2300 with effect from 01.06.92. Pay has been revised with effect from 01.04.93 at Rs.



1800-60-EB-2100-100-3000 and granted annual increment with effect from 1.4.94. The applicant has been granted three additional/special increments twice from 1.4.94 and 1.4.96 respectively consequent on award of commendation by CAs.. Regular gratuity was granted and the pay was refixed in the scale of Rs. 5500-175-9000 with effect from 1.10.97. Leaves of all kind were granted according to the service conditions. These are borne out from Annexure A/19 (service book of the applicant) and also from Annexure A/20 (pay fixation proforma w.e.f. October, 1997) in which the applicant's net emoluments was shown as Rs. 9379/-.

11. All the above documents reveal that the applicant has been initially employed as Part time employee, subsequently absorbed in the regular service and normal pay fixation was granted to him in tune with that of Office Superintendent and his superannuation age was fixed at 58 years of age. Taking into consideration the facts mentioned above and the findings of the Hon'ble Supreme Court, the parties are bound by Annexure A-1/AnnexureR-2 terms and conditions applicable in this case. It may be noted that in the terms and conditions, except Rule No. 24, all other rules and regulations are akin to the principles of Fundamental Rules enunciated for the Central Government employees. These rules also specifically mention that an employee could be removed from service only by following due process of law. In Fundamental Rules, except Section 56(j), there is no provision in retiring an employee. If the Section 24 is incorporated in tune with Section 56 (j) of the Fundamental Rules, the procedure adopted in F.R. 56 could also be applied in this case. We have narrated the service records of the applicant to show that he had an unblemished service records in his career and not even a single show cause notice was issued to him at any point of time. He was rated as an excellent and hard worker by his superiors, which is



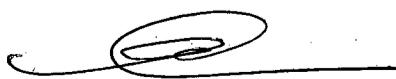
borne out from the office records as the applicant was granted special increments many times on account of the commendations awarded by the superior officers to him. Therefore, as regards the performance of the applicant is concerned, his records show that it was more than satisfactory and the respondents have no case to say that his performance was not upto the mark. Therefore, under Rule 24 (Annexures A-10/R-2) termination of the services of an employee, notice by one month, assigning no reason, is arbitrary, illegal and faulted.

12. On going through the proceedings, we find that the respondents conducted a surprise check to take stock of the situation. According to the applicant, it only to make a cause of action to tarnish the image of the applicant. He further contended that the respondents never undertook such surprise check during his career and it has only been carried out with mala fide intention and to make a cause for his termination. On the other hand, the respondents invoked the provisions of Rule 24 of Annexure A-1/Annexure R-1 service conditions. The argument of the learned counsel for the applicant is that the respondents should have dropped the proceedings against the applicant after issuance of warning to him and there is no indication of adopting disciplinary proceedings as per the terms and conditions of the service. On going through the documents, we find that in case the disciplinary proceeding is initiated for any misconduct, if any, the proceedings as enunciated under the CCS (CCA) Rules, are to be followed in this case also, such as, serving of notice, charge-sheet stating the imputation of misconduct, issuing show cause notice, reply to charge-sheet, personal hearing before awarding punishment, review of punishment amenable to appeal jurisdiction etc. etc. Therefore, there is no reason to infer that in case the respondents wanted to proceed against the applicant, all these procedures are to be followed and some



times, they may or may not prove the guilt of misconduct levelled against the employee. The applicant, therefore, challenged the Rule 24 of the terms and conditions in this O.A.

13. We have already observed that the respondents-organisation is within the meaning of Article 12 of the Constitution of India. It is well settled proposition of law that in such cases, the respondent becomes an authority or the instrumentality of the State and the State is within the meaning of Article 12 of the Constitution. The service regulations or rules framed by them are to be tested by the touchstone of Article 14. Article 14 of the Constitution states of equality and inhibits arbitrariness. If this dictum is adopted, it is very clear that the Rule 24(1) enunciated in Annexure-10/Annexure R-2 is not in conformity with the principles of natural justice and violative of Articles 14 and 16 of the Constitution of India. The action on the part of the respondents is against the credentials of all service standards on account of the fact that the applicant, who is serving in the organisation for more than 20 years with commendations of his superiors, has been removed from service without assigning any reason, by giving one month's notice, which is against the spirit of Article 311 of the Constitution. The learned counsel for the applicant invited our attention to the decisions of Hon'ble Supreme Court reported in AIR (51) 1964 SC 600, Moti Ram Dekha vs. General Manager, North East Frontier Railway, and AIR 1991 SC 101, Delhi Transport Corporation vs. D.T.C. Mazdoor Sangh and Others, in which it is stated as follows. In AIR (51) 1964, SC 600 (supra), it has been laid down that the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to the public servants under Article 311 (2). Once the scope of Article 311(1) and (2) duly determined it must be held that no Rule framed under Article 309 can trespass on the



rights guaranteed by Article 311, and referring to Article 14, the Bench comprising of seven Hon'ble Judges, held that the termination of service of Railway servants by notice has no rational basis between them and other public servants. There is no guiding principle for exercising discretion and hence Rules held invalid. In the decision reported in AIR 1991 SC 101 (supra), Hon'ble Supreme Court held that the termination of the services of a permanent and confirmed employee by issuing a notice without assigning any reason and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanonical and unrestricted violating the principles of natural justice as well as Article 14, 16 and 311 of the Constitution. No employee should be made to withstand an ordeal without having an opportunity to defend himself, is unfair. In the above facts and circumstances and the legal position discussed above, we are of the view that Rule 24(1) of Annexure A-10/Annexure R-2 terms and conditions is void and unconstitutional and no legal footing and to be set aside and quashed.

14. Further, it is an admitted fact that one Mr. Sajith Kumar has been selected and appointed to the post of Assistant Manager-cum-Accountant without proper publication in the news paper and the qualification of Diploma in Co-operation was prescribed by the respondent with a view to suit Shri Sajith Kumar. He was selected on 14.10.99 and joined the services very next day. In the order Annexure A/9, we find that the incumbent has been offered a consolidated amount of Rs. 3000/- per month during probation period, which is declared to be six months. Again, Annexure A/9 is issued in contravention of Annexure A-10/ Annexure R-2 terms and conditions. In the terms and conditions Annexure A-10/Annexure R-2, as per Rule 4, the probation period



is fixed for one year, which may be extended upto two years in appropriate cases. Whereas, Mr. Sajith Kumar was given only six months probation period, which has not been prescribed in the terms and conditions aforesaid, in the light of the fact that the said incumbent is a close relative of the second respondent (his father's brother's son). Therefore, it is a clear case of mala fide and arbitrariness on the part of the respondents for want of selection and appointment of the close relative of the second respondent. The arguments advanced by the learned counsel for the respondents that the applicant's family owns private business while he was serving as Manager of the Canteen and had sound financial status earning him the chair of the President of Lions Club, Trivandrum, etc. is not attracted any praiseworthy on account of the facts narrated above. Shri Sajith Kumar has been appointed without proper publication in the news paper and that too, he is a close relative of the second respondent and all these give a shadow of doubt in their action. The claim of the respondents that it is their discretion to declare probation after six months is absolutely incorrect, irregular and against the terms and conditions. This arbitrary action to favour his relative is never expected from a responsible officer of the Area Command, which is perverse and mala fides. On going through the records, we find that the action on the part of the respondent No. 2 to carry out a surprise check during December, 1999, has got nexus of termination of the applicant from service. Further, the contention of the Commanding Officer (respondent No.2) that to do away with the paid managerial post and utilise the services of a serving Warrant Officer without any extra expenditure on canteen funds is misleading and one Warrant Officer had been appointed to look after the duties of the Manager of the Unit Run Canteen, is also incorrect. We have asked a query to the respondent's counsel whether the Manager post is a full time post and the Warrant Officer was there through out. The answer was



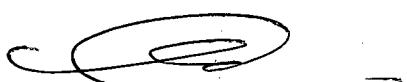
positive. If such is the case, engagement of the serving Warrant Officer in addition to an Assistant Manager-Cum-Accountant (a newly created post); will definitely give an extra financial liabilities from the canteen funds. Therefore, that argument of the learned counsel for the respondents cannot be sustained and could only be a made up story not supported by any rhyme or reason. It was designed only to oust the applicant from the employment.

15. In the circumstances and reasons discussed above, we have no hesitation in holding that the Rule 24(1) of Annexure A-10/ Annexure R-2 terms and conditions is void and inoperative and it deserves to be quashed. The impugned order dated 31.05.2000 (Annexure A/15) is also bad in law since it is issued in contravention of the terms and conditions (Annexure A-10/Annexure R-2) and also embedded with mala fides and not in conformity with the principles of natural justice.

16. In the conspectus of the facts and circumstances, we declare that the Rule 24(1) of the terms and conditions Annexure A-10/Annexure R-2 is unconstitutional, void and inoperative and the termination order Annexure A/15 being found arbitrary, are set aside and quashed. With the above findings and observations, we direct the respondents to grant all consequential benefits to the applicant including his reinstatement with back wages and take appropriate action/ decision in respect of continuance of the new post of Assistant Manager-cum-Accountant in the best interest of the Institution.

17. There will be no order as to costs.

(Thursday, this the 26th September, 2002)



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

A P P E N D I X

(In O.A. No. 215/2001)

APPLICANT'S ANNEXURES

1. Annex.A/1 True copy of the certificate dated 30.09.87 issued by the Air Officer Commanding-in-Chief of the Southern Air Command to the applicant.
2. Annex.A/2 A true copy of the certificate dated 31.10.89 issued by the AOC-in-C to the applicant.
3. Annex.A/3 A true copy of the appointment letter issued to the applicant by the first respondent, No. SACU/712/1/Org. dated 9.1.89.
4. Annex.A/4 A true copy of appointment confirmation letter SACU/712/12/Org dated 4.5.89 issued to the applicant.
5. Annex.A/5 A true copy of the certificate dated 17.03.93 issued by the Senior Office Administration to the applicant.
6. Annex.A/6 A true copy of the appreciation certificate No. SAC(U)103/1/P1 dated 30.06.93 issued by the Commanding Officer of the Southern Air Command Unit to the applicant.
7. Annex.A/7 A true copy of the commendation (in Hindi) issued by the Chief of Air Staff to the applicant.
8. Annex.A/7a A true English translation of Annexure A/7.
9. Annex.A/8 A true copy of the letter No. SAC/C/7022/3/P1 dated 31.01.95 issued by the AOC-in-C of the Southern Air Command to the applicant.
10. Annex.A/9 A true copy of the order No. SAC/(U)/712/1/Org. dated 14.10.99 appointing Mr. V.K. Sajith Kumar as Assistant Manager-cum-Accountant.
11. Annex.A/9a A true copy of the notice inviting applications for the post of Assistant Manager.
12. Annex.A/10 A true copy of the Rules regulating the terms and conditions of Service of Civilian Employees of Air Force URCs paid out of Non-Public Funds dated 16.02.99.
13. Annex.A/11 A true copy of the letter No. SAC(U)/712/1/Org dt. 24.04.2000 issued by the second respondent confirming the service of Mr. VK Sajith Kumar.
14. Annex.A/12 A true copy of the show cause notice No. SACU/702/3/Org. dt. 8.12.99 issued to the applicant by the second respondent.
15. Annex.A/13 A true copy of the reply to the show cause notice dated 10.12.99 submitted by the applicant to the first respondent.

16. Annex.A/14 A true copy of the warning letter No. SAC(U)/702/3/Org. dt. 14.12.1999 issued by the second respondent to the applicant.
17. Annex.A/15 A true copy of the order No. SAC(U)/702/3/Org. dated 31.5.2000 issued by the second respondent to the applicant.
18. Annex.A/16 A true copy of the order dated 07.06.2000 in CMP No. 26108 of 2000 in OP No.15980 of 2000 passed by the Hon'ble High Court of Kerala.
19. Annex.A/17 A true copy of the judgement dated 21.6.2000 passed by the Hon'ble High Court of Kerala in OP No. 15980 of 2000.
20. Annex.A/18 A true copy of the judgement dated 19.01.2001 in WA No. 1363 of 2000 of the Hon'ble High Court of Kerala.
21. Annex.A/19 True copy of the service book of the applicant.
22. Annex.A/20 True copy of the pay fixation proforma.

RESPONDENTS' ANNEXURES:

1. Annex.R/1a True copy of Unit Routine Order dated 28.9.99 issued by Wing Commander, HQ, Southern Air Command.
2. Annex.R/1b True copy of Unit Routine Order dated 07.10.99 issued by Wing Commander, HQ Southern Air Command.
3. Annex.R/2 True copy of the Terms and Conditions of Air Force URC employees.
4. Annex.R/3 True copy of judgement reported in AIR 2001 SC 526.
