

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 224 OF 2008

Tuesday, this the 16th day of December, 2008.

CORAM:

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

D.Raju, Ex-Subedar (Hon.Subedar Major)
Grocery-in-charge (terminated from service)
Station Canteen Trivandrum
Extension Counter, Kollam
Residing at Kailasam, Royal Nagar- 85
Kilikolloor, Kollam ... Applicant

(By Advocate Mr.T.A.Rajan)

versus

1. Union of India represented by the Secretary
Government of India
Ministry of Defence
New Delhi
2. Station Commander
Station Head Quarters
Pangode Thirumala P.O
Trivandrum
3. Station Staff Officer
Station Head Quarters
Pangode Thirumala P.O
Trivandrum ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 16.12.2008, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-3 letter dated 05.02.08 terminating his contractual service with effect from 6.2.2008. By the said letter, the respondents have informed the applicant that they had received information from the Station Canteen Extension Counter, Kollam that he was arrested by Sub Inspector of Police Station, Kundara for an offense under Section 342, 294B

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and 509 of the IPC and consequently, in terms of Para 10 (c) of the Contract Agreement, his service could not be continued. The Contract Agreement has been annexed as Annexure A-1 to this OA and Clause 10 of the same reads as under :-

"The Station Commander shall have the right to terminate the agreement by giving one month's notice to the Engaged Person or one month's remuneration as compensation in lieu thereof without prejudice to the generality of the right of termination may be on any of the following grounds for which an opportunity to show cause will be afforded to him/her :-

- (a) Job related incompetence or misconduct or an act of moral turpitude.
- (b) Unsatisfactory performance of duty.
- (c) Arrest or conviction by a court of law for any offence.
- (d) Any act prejudicial to security or interest of the organisation (Ex-servicemen Extension Counter Canteen)
- (e) Absence of leave beyond 30 days.
- (f) Prolonged or habitual absence from duty without prior permission of the competent authority including prolonged absence due to medical illness.
- (g) Inadequate work.
- (h) Breach/violation of any provision of this agreement by the Engaged Persons."

2. The brief facts of the case are that the applicant is an Ex-serviceman with 28 years of service in the Army and he retired as a Hon'ble Subedar Major. He was appointed as Grocery-in-charge at the extension counter at Kollam on contractual basis for a period of 11 months from the date he joins duty, vide Annexure A-1 agreement dated 01.09.06. Clause 10 the agreement which contains the provision for terminating the contractual service has already been quoted above. During the currency of the aforesaid agreement, the applicant was issued with Annexure A-2 letter dated 01.06.07 stating that he was placed on probation for a period of one year and it was to expire on 10.06.07. It was also stated in the said letter that his performance was only just satisfactory and therefore he was not confirmed as permanent employee. However, he was informed him that he will be considered for contractual employment for a further 11 months for which he has to submit fresh application to the Patron, Station



Canteen, Trivandrum before 10.06.07 but he continued to serve the respondent's in the same capacity as Grocery-in-charge.

3. According to the applicant's counsel Shri T.A.Rajan, Annexure A-3 letter dated 05.02.08 was issued to him in violation of Rule 10 of Annexure A-1 agreement itself, as, under the said Clause 10(c) thereof, he is entitled for a show cause notice before his service was terminated. The other contention of Mr.T.A.Rajan, is that after the judgment of the Apex court in **Union of India vs. M.Aslam & Others** [(2001) 1 SCC 720] decided on 04.01.2001, the status of the employees serving the Unit Run Canteens is that of government servant and it was not to be governed by the Annexure A1 agreement but by the "Rules regulating the terms and conditions of service of civilian employees of Unit Run canteen paid out of non public fund," framed by the Ministry of Defence pursuant to the directions contained in the said judgment. He invited my attention to rule 24 of the said Rules which deals with the procedure of misconduct which reads as follows:-

"24. PROCEDURE FOR DEALING WITH CASE OF MISCONDUCT:
Before awarding to an employee any of the punishment mentioned in Rule 24, following procedure shall be followed by the disciplinary authority:

- (a) The employee shall be served with a charge sheet, clearly stating the details of misconduct against him and calling upon him to show cause as to why one or more of the punishment is included in these Rules should not be awarded to him.
- (b) The reply to the charge sheet, if any, shall 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 witness(s) against him or produce witnesses in his defence. The disciplinary procedure is laid down in Schedule 'B' "

Shri Rajan has also relied upon the judgment of the Apex Court in **Dharma Nand and another vs. Union of India & others** [2004 SCC (L&S) 1034]. The



petitioners in the said case were employees of the Station Canteen, Kotwar under the Garwal Regiment Centre, Lansdowne, U.P. Their services were terminated after they had completed 5 years tenure, on the ground that their services were no longer required. However, Apex Court held that such employees were to be treated as per decision of **Aslam case (supra)** and therefore, ordered for their re-instatement and payment of consequential benefits. The operative portion of the said judgment reads as Under :-

"4. In the present case also, the petitioners Dharma Nand and Dayal Singh were working as canteen employees which was under the Defence Ministry and they were also entitled to be treated as government servants. The counsel for the Union of India submitted that the petitioners along with others were appointed as canteen employees on temporary basis and the appointment itself was given for a fixed term and on completion of the term, their services were terminated. The counsel also drew our attention to the Rules framed for this purpose for the canteen employees. 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."

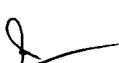
4. Respondents have filed reply stating that the applicant's service was terminated under Para 10 (c) of the contractual agreement (Annexure A-1). According to them, applicant's contractual service was not to be continued as no contractual employee, who involved in arrest or has been convicted by a Court of law can be retained. It was further submitted that the applicant being a contractual employee, his extension of service is to be approved by the Respondent No.2, namely, the Station Commander, Station, Headquarters, Trivandrum based on his performance. They have stated that the termination of his service was neither illegal nor unjustified but it was as per contractual agreement.

5. I have heard Advocate Mr T.A.Rajan, learned counsel for applicant and Advocate Mr.M.L. George on behalf of Mr.TPM Ibrahim Khan, SCGSC for



respondents. It is an undisputed fact that the applicant was appointed as a Grocery-in charge under the 3rd respondent in terms of Annexure A-1 agreement dated 01.09.06. Even though the period of the agreement has expired by 10.06.07, the applicant was allowed to continue in service. It has also been stated in Annexure A-2 letter dated 01.06.07 that the applicant was on probation for a period of one year and his period of contractual employment has been extended further before he was confirmed as a permanent employee. Whether the contractual period has been mutually extended beyond 10.06.07 or not, as stated in Annexure A-2 letter dated 01.06.07 the applicant was continuing as a contractual employee. The respondents themselves have admitted that he was still to be governed by the provisions of the Annexure A1 agreement. The termination of the applicant's service was in terms of the provisions contained in Rule 10 of the Annexure A-1 agreement. According to the said clause, the applicant is entitled to show cause notice before his service is terminated. On the one hand, while respondents have stated that the applicant's service was terminated in terms of the aforesaid Clause 10 (c) of the agreement, on the other hand, they have stated that the termination without show cause notice is quite legal and justified.

9. In my considered view, respondents action terminating the service of the applicant is absolutely arbitrary and violative of natural justice. When, in the contractual agreement itself, the respondents have provided that the applicant is entitled for show cause notice before his service is terminated, the impugned termination order issued in violation of the said provision has to be quashed and set aside. The second leg of the argument of the counsel for applicant is that the applicant should have been considered as a government employee in terms of Apex Court judgment in **M.Aslam & Ors (supra)** and the rules framed thereunder by the Ministry of Defence. In my considered view, it is not



OA 224/08

necessary for me to go into the said aspect at the present stage as the relief sought by the applicant is limited to the extent of quashing the Annexure A3 as the same has been issued in violation of Rule 10(c) of the Annexure A1 agreement and to direct the respondents to reinstate him in service with all benefits. The applicant may agitate this issue at a later stage, if so advised. As the termination of the applicant is in clear violation of Clause 10 (c) of the Agreement (Annexure A-1), I hereby quash and set aside the Annexure A-3 termination order dated 5.2.2008. Respondent No.3 is directed to reinstate the applicant forthwith with all consequential benefits.

10. With the above direction, OA is allowed. There shall be no order as to costs.

Dated, the 16th December, 2008.



GEORGE PARACKEN
JUDICIAL MEMBER

vs