

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 229/2002

FRIDAY THIS THE 5th DAY OF MARCH, 2004.

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

Ajithkumar T.
Ex Salesman, Unit Run Canteen
INS Valsura, Jamnagar
now residing at Olippurath Vadakathil House
Arinalloor P.O.
Kollam. Pin- 690 538

Applicant

By Advocate Mr. P.C. Sesbastian

Vs.

1. The Flag Officer
Commanding in Chief
Head Quarters,
Southern Naval Command
Kochi-682 004.
2. The Commanding Officer
INS Valsura, Jamnagar
Pin-361150
3. The Officer in Charge
Unit Run Canteen
INS Valsura
Jamnagar, Pin -361150
4. Union of India represented by the Secretary
Ministry of Defence
New Delhi.

Respondents

By Advocate Mr. C.Rajendran, SCGSC

The Original Application having been heard on 7.1.2004 the Tribunal delivered the following on 5.3.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant, a dismissed employee of the Unit Run Canteen (URC) INS Valsura is aggrieved by the rejection of his representation for regularisation. The applicant joined as a Casual Canteen worker in URC INS Valsura in 1984 and was asked to discharge the duties of a salesman a year after without issue of a formal appointment order, but with the

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approval of the Commanding Officer who was in overall control of the establishment. Since 1989 the applicant started working as a Cashier. He continued as such until termination of his service on 19.1.2002. Thus the applicant had worked continuously from 1984 to 2002 and was entitled, according to him, to the benefit of regularisation consequent on the introduction of the Terms and Conditions of Service of URC Employees on 1.6.2001. Instead of regularising his service as a permanent employee of URC, his services were terminated on the ground of total lack of integrity, a conclusion derived from the unsubstantiated allegation of defalcation investigated behind his back without ever issuing a chargesheet. The respondents contended that a Board of Inquiry constituted to investigate into a case of misappropriation had found the applicant responsible for misappropriation in collusion with certain other canteen employees and accordingly a Selection Board appointed for redesignating the canteen employees under the Terms and Conditions introduced on 1.6.2001, had found him unfit for continuance in service.

2. The learned counsel for the applicant, tracing the background of the applicant's employment in the URC of INS Vasura invited our attention to the fact that the applicant had served the unit for more than 17 years and went on being entrusted with higher responsibilities with higher salaries at each stage entirely due to his efficiency and integrity. The counsel argued that the very fact that the applicant was asked to handle cash was proof of the fact that the applicant was trustworthy. The learned counsel pointedly emphasized the fact that the applicant's rise from the level of an

ordinary worker to the level of a Cashier within a period of five years was due to the applicant's loyalty, dedication and honesty. This was ever more noteworthy in the context of the admitted fact that at no stage was any formal appointment letter issued, even when as a Cashier he was required to handle a large volume of cash. In December, 2000 a case of misappropriation of cash was detected in quarterly internal audit of canteen cash and stores and those who ran the affairs of the canteen were investigated. The applicant was suspected to be an accomplice but no incriminating evidence was found against him. While the officers found responsible were proceeded against, the applicant was merely asked to assist the investigation by a Board of Inquiry as a witness. The applicant did his best, but most surprisingly the Board of Inquiry found him personally responsible for the misappropriation in collusion with others without ever giving him a chance to place his defence. The entire proceeding was carried on in secrecy behind his back. The respondents' statement that he had admitted his guilt is also a false statement.

3. The learned counsel for the respondents invited our attention to the Terms and Conditions of service of URC employees introduced in pursuance of the order of the Apex Court dated 4.1.2001 in Union of India and Others Vs. M. Aslam and Others. Under these Rules/Guidelines all civilians employed in URCs were required to be redesignated by a Board of officers and fresh appointment letters were to be issued. The Commanding Officer of INS Valsura accordingly constituted a Board on 21.11.2001 with the following terms of reference:

11.6.22

(a) Identify jobs in URC required to be manned by civilians, indicate respective designation, fix pay scales and frame charter of duties and responsibilities for each designation;

(b) recommend names of personnel for employment against above designations from employees who have been working in the URCs.

4. The Board, in its recommendation dated 10.1.2002 inter alia dealt with the application of Sri T. Ajit Kumar and observed that Sri T. Ajit Kumar (and Kiran B. Pawar) were to be outrightly denied appointment on account of their admitted large scale misappropriation of funds of the very same canteen and their services be terminated. There were others also whose services were recommended for termination. The services of the applicant (T. Ajit Kumar) were terminated on 19.1.2002. The applicant along with some other aggrieved URC employees had in OA 402 of 2001 brought the matter of his regularisation before the Ahmedabad Bench of the CAT and in its order dated 21.6.2001 the Tribunal had directed the applicants to make representations to the competent authority and the competent authority were to dispose of the representation in the light of M. Aslam and Others (Supra). The order of termination dated 19.2.2002 was issued by the respondents after considering the representation made by the applicant in pursuance of Tribunal's orders. The learned counsel for the respondents further contended that there was neither any malafide nor any attempt to implicate the applicant. The applicant had himself admitted the charge of misappropriation of Canteen Cash, he had even explained the modus operandi. He had also refunded partly the defalcated amount. It is on the basis of the guilt admitted that the Board of Inquiry had found him guilty after corroborating the confessional statement with actual facts. The Selection Board in redesignating the URC employees and assessing their

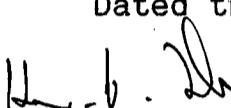
suitability had taken the decision not to recommend the applicant on the basis of the findings of the Board of Enquiry. The learned counsel argued that the applicant, despite long seventeen years in URC could not be considered for regularisation due to a serious offence. Continuity would fail to ensure his status, he contended, when he had absolutely no integrity. The applicant, by his own misdeeds had rendered himself unsuitable for regularisation.

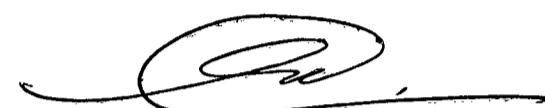
5. Heard the counsels. We are not convinced that the applicant has a legitimate case for regularisation. Even before the decision of the Apex Court dated 4.1.2001, the applicant's involvement in the case of misappropriation had already come to light. The applicant had confessed his involvement on 14.12.2000 and by his own statement had even refunded a part of the defalcated amount. This fact had not been brought to the notice of the Tribunal and in the circumstances the Tribunal had only directed the applicant to make a representation as the remedy available was not yet exhausted. The respondents were within their rights in rejecting the claim of a tainted casual worker. The allegations that the enquiry was conducted behind the back of the applicant and that he was not afforded the required opportunity, are not well founded as the applicant at that point of time was not entitled to the protection of the terms and Conditions of Employment for URC employees. He had not acquired any right, and further the re-designating Board had found him unsuitable for absorption thereby taking him out of reckoning from the sweep of the regularisation norm. We cannot find fault with the respondents for not regularising the services of a casual employee, who despite long years in

various trusted positions in the URC had by design and in collusion perpetrated an act of fraud betraying their trust in his integrity so completely as to render himself unwanted.

6. We therefore dismiss the Application. No order as to costs.

Dated the 5th March, 2004.


H.P.DAS
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

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