

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.262/2001

Thursday this the 5th day of September, 2002

C O R A M

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

K.G.Mathaikutty,
Keecheril House, kallampally,
Sreekariyam P.O., Thiruvananthapuram,
Now working as Assistant Manager,
N.C.C.Group Quarters Canteen,
Thiruvananthapuram

Applicant

[By Advocate Mr.Lal George]

Vs.

1. The Union of India represented by
its Secretary to Government,
Ministry of Defence,
New Delhi
2. Chairman,
Unit Run Canteen N.C.C,
Group Head Quarters, Sasthamangalam,
Kochar Road,
Thiruvananthapuram

Respondents

[By Advocate Mr.C.Rajendran, SCGSC]

The application having been heard on 16.07.2002, the
Tribunal on 5th September, 2002 delivered the following:

O R D E R

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

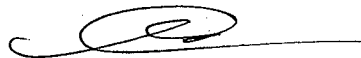
The applicant an Ex-serviceman after 17 years of service
in the Army retired on 19.4.1985 and re-appointed as Salesman in
the N.C.C.Group Head Quarters Canteen, Thiruvananthapuram vide
Annexure A-9 order dated 12.6.2000 issued by the 2nd respondent.
The service of the applicant is under challenge, Annexure A-12
order which has put him under suspension on 9.1.2001.



2. The pleadings in the Original Application is that when the applicant was working as Salesman in the NCC Group Head quarters Canteen, Thiruvananthapuram, he was promoted as Bill Clerk in 1987 and subsequently promoted as Assistant Manager in May, 1992. He was reverted in 1995 as Bill Clerk on account of non-sanction of the post of Assistant Manager. He rendered excellent service and he was promoted to the post of Assistant Manager on 18.10.1996 on regular basis vide Annexure A-1 order dated 18.10.96. He has got more than 7 years service in the Canteen Department. He is due to retire from service on 31.8.2008. It is submitted that NCC Unit Run Canteen Stores Department forms a part of the Ministry of Defence and the Canteen Stores Department under the Ministry of Defence provides fund as well as different articles for distribution through the retail outlets of the Unit Run Canteens. The officers of the Defence service have all pervasive control over the employees serving therein. The Committee constituted of Defence personnel and their nominees have the total control of the same. Therefore, the applicant is also to be considered as a Central Government servant as in the case of employees working in the Unit Run Canteen of the three services. The employees working in the Canteen service are under the control of Ministry of Defence and they are Central Government servants. The 2nd respondent is amenable to the jurisdiction of this Tribunal. The Hon'ble Supreme Court also decided in Union of India & Others Vs. M.Asalam & Others 2001 (1) SC 11 and declared that the employees working in various canteens under the control of Defence Ministry of India are Central Government servants. The applicant produced the copy of the attendance register and salary ledger of contributions towards



the Central Government PF receipts to show that he was an employee of NCC Group Head Quarters Canteen, Thiruvananthapuram on regular basis and amenable to Central Government rules. He had unblemished service records. But when one Shri P.R.Gopalan assumed charge on 5.8.1999 as Chairman of the NCC Head Quarters Canteen, he started enemical to him since he did not oblige to his whims and fancies and started to wreck vengeance on the applicant. The 2nd respondent insisted the applicant to issue articles to ineligible persons, the slip of which are Annexure A-5 and A-6 and further on the intervention of the applicant the 2nd respondent could not effect transportation of 182 bottles of Indian made liquor under the guise of canteen supply. A show cause notice Annexure A-7 dated 3.5.2000 was served on the applicant on an alleged misbehavior on the staff of the State Bank of Travancore, Sasthamangalam Branch on 5.4.2000. Annexure A-7 was based on a private and confidential complaint from the Bank which the applicant was not aware and the alleged inspection conducted by the Group Commander of NCC Group, Thiruvananthapuram was also behind his back. In any way, the applicant submitted Annexure A-8 reply to the show cause on 11.5.2000 denying the allegations of his misbehavior. Applicant has gone to the bank for depositing Rs.81,000/- and when the cashier in the Cash Chest attempted to receive cash without following the priority in the queue, the applicant questioned the same and he had no occasion to misbehave with any of the bank staff. He was standing in the queue without any escort or security and State Bank of Travancore on their accord had not made any complaint to the 2nd respondent as alleged. Without affording an opportunity, an enquiry was conducted and the order of termination was served which is



Annexure A-9. The applicant was not heard before issuing Annexure A-9 termination order. It has not taken effect and no substitute has been appointed to the post of Assistant Manager, NCC Group Head Quarters canteen.

3. Annexure A-9 was challenged in High court in O.P.No.16776/2000 and finally as per directions of the Division Bench in Writ Appeal 1281/2000, this was considered by a Single Bench, and an interim order was passed as per Annexure A-10.

✓
Hon'ble

4. On a final hearing the High Court has observed that the applicant is also to be treated as Government servant as in the case of employees in the Unit Run Canteens of the three services and the applicant withdrew the O.P on 5.3.2001 with the liberty to challenge Annexure A-9 order and the Original Application is filed under Section 19 of the A.T.Act, 1985 seeking the following reliefs :

- (i) Quash Annexure A9 & A12 orders issued by the 2nd respondent.
- (ii) Declare that the applicant is a permanent Central Government employee, he is entitled to get the protection granted under Article 311 of the Constitution of India and Annexure A9 termination order is null and void.
- (iii) Stay the operation and implementation of Annexures A9 & A12 orders.
- (iv) Direct the respondents to reinstate the applicant in service forthwith, with all consequential benefits.
- (v) Grant such other further reliefs as may be prayed for or is deemed fit, just and necessary by this Hon'ble Tribunal during the course of arguments.
- (vi) Grant the cost of the applicant in these proceedings.



5. Respondent No.2 has filed the reply statement on his behalf and on behalf of the 1st respondent contenting that the Unit Run Canteen, NCC (URC) is a private undertaking and the employees are not Government servants. Annexure R-1 letter of the Ministry of Defence dated 27.10.1977 is produced. The applicant was initially appointed temporarily and had never been promoted as claimed by him as per Annexure R-3, there is no provision to have an Assistant Manager in the NCC, URC as he did not serve due mandated number of clients. The documents Annexure A-1 produced by the applicant is merely a photocopy of purported document, the original to which does not exist. The funds of the URC are non-government ones, the Chairman of the URC in addition to his duties and for which the officer is not paid any additional pay or perks. The claim of the applicant that the employees working in URC are Central Government servants are not correct. The documents produced suffice through the case of the applicant. The Group Head Quarters NCC Unit Run Canteen does not maintain any CPF account for its temporary employees. The NCC, URC is a private venture of Defence personal, specific number of attached Ex-serviceman and other specific entitled categories. The Unit Run Canteen has no administrative control over unit canteen or their employees by the units under various terms and conditions mutually settled between the units and the employees. There is no provision for permanent employment and no question of the applicant claiming permanent employee or a government servant. There is no cause for the then Chairman to single out the applicant and be vengeful towards the applicant. The allegations against the Chairman in the OA has been denied as baseless and false and this is an indication of the negative



nature of the applicant. The allegation that no complaint was lodged by the applicant against State Bank of Travancore, Sasthamangalam Branch is incorrect. On 8.4.2000 a complaint was received from State Bank of Travancore of his misbehavior with a lady cashier of the Bank, Mrs. V.S.Chandralekha Nair and had used abusive language and made the functioning of the bank difficult. On receipt of the complaint, an officer of Lt.Col. Rank, equivalent to Senior Superintendent/Commissioner of Police conducted an enquiry and statements of Mr.Mathaikutty and others were taken in Annexure R-7 as statement of the applicant in this regard. Based on the various inputs received the investigating officer squarely blamed the applicant as per Inspection Report R-8 and further probing into the previous conduct of the applicant found to be habitually under the influence of liquor during working hours and ill tempered and in the habit of misbehaving, Annexure R-9 is one such complaint. Then the show cause notice was issued (Annexure R-10). An investigation was conducted on specific allegations of misconduct by the applicant and given ample opportunity to defend the case. The reply statement to the show cause notice totally avoided the issue of misbehavior which is Annexure R-11. As per the terms of engagement of an employee of the URC, his service can be terminated without any notice on disciplinary grounds and with 30 days notice in the normal course. This aspect is contained in Para 58 (a) & (b) produced as Annexure R-12 which shows that "Employment of any Canteen staff will be terminated by the Canteen Committee with a notice of one month." The condition of engagement and service concerning the employees of URC provides for termination without any notice on disciplinary grounds. The



service of the applicant in the instant case was terminated with a notice of 30 days. Annexure A-9 duly adhering to all established and postulated norms procedures and norms. The termination of service was due to indiscipline and is not a service matter. Therefore it is requested that the Original Application is devoid of any merit and deserves to be dismissed.

6. We have heard the counsels Shri Lal George for the applicant and Shri C.Rajendran, SCGSC for the respondents and perused the documents, materials placed on record. The applicant contented that the termination order Annexure A-9 and suspension order Annexure A-12 are illegal, arbitrary and violative of Article 14, 16 & 311 of the Constitution of India. These orders were issued behind the back of the applicant. No enquiry with due notice was conducted before issuing Annexure A-9 termination order. The applicant was not personally heard before issuing Annexure A-9 order. Therefore Annexure A-9 is in violation of the enshrined principles of natural justice as well as the protection granted to the government servants under Article 311 of the Constitution of India. The applicant is entitled to get the protection guaranteed under the above provision. The applicant was a regular employee. Except issuing show cause notice, no disciplinary proceedings or enquiry were conducted by the 2nd respondent before issuing annexure A-9 termination order. The applicant had no occasion to misbehave with any of the bank staff as alleged in the show cause notice. The show cause was not served on the applicant. The 2nd respondent was enemical towards the applicant and was at loggerheads. The case was foisted against the applicant to wreck vengeance on him.



Annexure A-9 termination order was issued without following the procedure established and it has no nexus with the misbehavior alleged show cause notice and the punishment of termination is too harsh and against all accepted principles of equity and good conscious. Annexure A-12 suspension order was issued on flimsy grounds of causing alleged damages caused to the indicator of the scooter, which was parked in the scooter stand while the applicant was taking his scooter from the same stand. He emphasised that the reliefs sought in the Original Application may be granted.

7. Counsel for respondents submitted that the termination of the applicant was after due enquiry by the competent authority and as per extant rules the service of the applicant could be terminated even without any notice on disciplinary grounds and with 30 days notice in the normal course. Therefore Annexure A-9 cannot be faulted and Annexure A-12 is also not faulted.

8. We have given due consideration to the arguments advanced by the learned ^{Hon'ble} counsels. Admittedly, the matter initially was taken before the High Court in O.P.No.16776/2000 and finally vide Annexure A-11 order relying on the decision of UOI Vs.M.Asalam & Ors 2001(1) SC 11 and Parimal Chandra Raha and others Vs.Life Insurance Corporation of India and others (1995 Supp.(2) SCC 611) has held that " the URC is not made out of consolidated fund of India but is made by the canteen Stores Department in turn, has formed a part of the Ministry of Defence." It further held that " URC 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 Administrative Tribunals' Act" and finally taken a view as under :-

".. In view of the above, we hold that the appellants are justified in contending that a writ petition is not maintainable at the instance of the respondent herein challenging the termination of his service. But following the dictum laid down by the supreme Court, we further hold that the remedy of the petitioner is to approach the Central administrative Tribunal. Since we have taken the view that the writ petition is not maintainable, we set aside the interim order passed by the learned single Judge in C.M.P.No.27576 of 2000 dated 26.7.2000, which is under challenge in this appeal. The writ appeal stands allowed, as above."

9. From the above observation, it is clear that the contention of the respondents that the applicant will not come under the purview of Central Administrative Tribunal is not sustainable and therefore the challenge of the maintainability of the Original Application cannot be entertained. Therefore, we hold that this Tribunal has jurisdiction to entertain the application and we proceed on that footing. The terms and conditions of URC employees has been produced as Annexure A-14, prescribes the mode and procedure to be followed in a mis-conduct of an employee as envisaged in Section 38 to 41 is as follows :

Punishment of Misconduct.

38. The appointing authority shall also be the disciplinary authority.
39. Any employee who is found guilty of misconduct may be awarded any one or more of the following punishments by the disciplinary authority:-
 - (a) Censure
 - (b) Recovery from his pay and allowances, the whole or part of any pecuniary loan caused by him to the URC.



- (c) Withholding of one or more increments upto a period of three years.

Explanation. *

- 40. The following shall not amount to punishment within the meaning of this guidelines, namely:-
 - (a) Termination of service of a casual employee in accordance with the terms and conditions of his employment.
 - (b) Termination of service during probationary period.

Procedure for dealing with case of misconduct.

- 41. Before awarding to an employee any of the punishments mentioned in para 37 & 38 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 guidelines 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 witness(es) against him or produce witnesses in his defence. The disciplinary procedure is laid down in Appendix 'B'.

10. Further, from the above provision it is very clear that even the URC terms and conditions make it mandatory in a disciplinary proceedings of mis-conduct, a disciplinary authority should be appointed and the disciplinary authority should " serve the employee 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 should be awarded to him. the reply^a to the charge sheet, if any, must be duly



considered by the disciplinary authority. If the employees so desires, he is to be heard in person and also allowed to cross examine the witnesses and produce witnesses in his defence. the procedure in Appendix B which is reproduced as under :-

PROCEDURE FOR DISMISSAL/DISCHARGES:

The procedure for dismissal/discharge on account of misconduct/indiscipline as follows :-

- (a) Before the employee is dismissed or discharged from service following procedures shall be adopted in accordance with the principle of natural justice as applicable from case to case :-
 - (i) Issuance of charge sheet.
 - (ii) Appointment of Enquiry Officer
 - (iii) Holding of an enquiry.
 - (iv) Perusal of the report of Enquiry Officer by the Disciplinary Authority.
 - (v) Issuance of show cause notice.
 - (vi) Issuance of order of punishment.
- (b) In the even of services of a legally qualified person being utilised by the management/establishment to present their case before the Enquiry Officer, the same opportunity must be offered/afforded to the delinquent employee. However, the employee can utilise the services of one of his colleagues to present his case before the Enquiry Officers.
- (c) After considering the enquiry report, if misconduct is established the disciplinary authority shall proceed to take appropriate action. However, the disciplinary authority is not bound to accept the enquiry report but while awarding the punishment, the authority must state its reasons for not accepting the enquiry report.

11. From the above rules and procedure, it is very clear and mandatory that before an employee is dismissed or discharged from service the procedure in accordance with the principles of natural justice shall be adopted by issuance of chargesheet,



appointment of Enquiry Officer, holding of an enquiry, perusal of the report of Enquiry Officer by the Disciplinary Authority, issuance of show cause notice and issuance of order of punishment. After hearing the delinquent employee, with a liberty to present the case before the Enquiry Officer and it is also made clear that the disciplinary authority is not bound to accept the enquiry report but while awarding the punishment, the authority must state its reasons for not accepting the report. When such a clear cut norms and procedure is stipulated we are at a loss to understand why the respondents had not adopted or followed the procedure when they should bound to follow.

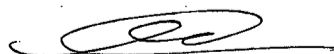
12. Therefore, there is strong force in the contention of the applicant that the entire proceedings is vitiated by arbitrariness, unfairness, illegal, irrational and unreasonable. It is well recognised principles of law that without compliance of the principles of natural justice, if any such disciplinary proceedings are initiated it is clear violation of Article 14 of the Constitution of India and this is arbitrary and in judicial review irrational and non following the principles of natural justice is a recognised ground of judicial review and interference by the Court. When clear rules and regulations are prescribed, for such disciplinary proceedingsⁱⁿ the respondents establishment as discussed above, any deviation where by-passing of such rules is not explained by the respondents. This only shows the perversity and arbitrariness on the part of the respondents which cannot be justified. Going through the materials on record it is clear that no such enquiry prescribed by the procedure has been followed by the respondents, but on the



other hand an unilateral enquiry without affording an opportunity to cross examine the alleged witness is being based for such an action of termination of the applicant from service, which is highly arbitrary.

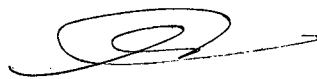
13. It is very clear that the applicant has been terminated without an enquiry. The contention of the respondents that enquiry is not necessary cannot be accepted at any stretch of imagination. We are respectfully in agreement with the finding of the order of the Hon'ble High Court in C.M.P.27576/2000 in O.P.No.16776/2000 of the Single Bench that " when an incumbent is sent out from service casting a stigma on him it is incumbent on the disciplinary authority to conduct an enquiry and to observe the principles of natural justice. Thus prima facie, the termination is bad." So also on the materials placed on record, there is clear reasons to find fault with Annexure A-12 suspension order which according to us is a conscious vengeance in furtherance to Annexure A-9 termination order. It is also not inconformity with the procedure laid down as per Annexure A-14 rules. Further we are of the considered view that Annexure A-9 and A-12 are faulted and has been passed in total violation of natural justice and therefore, to be set aside.

14. In the conspectus of facts and circumstances we set aside and quash Annexure A-9 and A-12, the termination order and suspension order of the applicant and further direct the respondents to reinstate the applicant forthwith. We make it clear that the respondents would be at liberty to proceed further

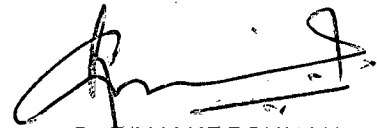


in case they wish to do so with the disciplinary proceedings with due compliance of the procedures and rules laid down. With the above finding, we allow the Original Application as above and no order as to costs.

Dated, the 5th September, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

VS

A P P E N D I X

Applicants Annexures :

1. A-1: True copy of the Proceedings dated 18.10.1996.
2. A-2: True copy of the Attendance register pertaining to the canteen staff during the month of January 1999.
3. A-3: A true copy of the Salary ledger pertaining to the canteen staff for the month of December, 1999.
4. A-4: True copy of the Receipt issued by the Canteen Service Department dated 2.02.2000.
5. A-5: True copy of the slip signed by the 2nd respondent to one Shri Rajan.
6. A-6: True copy of the slip signed by the 2nd respondent to one Shri Radhakrishnan.
7. A-7: True copy of the show cause notice dated 3.05.2000.
8. A-8: True copy of the reply notice dated 11.05.2000.
9. A-9: True copy of the order issued by 2nd respondent dated 12.06.2000.
10. A-10: True copy of the order passed in C.M.P.No.27576/2000 in OP No.16776/2000 dated 26.07.2000.
11. A-11: True copy of the judgment in Writ Appeal No.1675/2000 dated 20.02.2001.

12. A-12: True copy of the suspension order issued by 2nd respondent No.2009/GEN/URC dated 9.01.2001.
13. A-13: True photocopy of the proceedings dated 16.04.1996.
14. A-14: True photocopy of the terms and conditions of service of URC employees.
15. A-15: True photocopy of Turnover statement dated 29.04.1999.
16. A-16: True photocopy of representation submitted by Defence Canteen Civil Employees Association dated 10.04.2001.
17. A-17: True photocopy of Leave Register dated 16.04.2001.
18. A-18: True photocopy of Leave Application dated 28.04.2001.
19. A-19: True photocopy of Leave Application dated 4.05.2001.
20. A-20: True copy of Final Report in Crime No.18/2001, Museum Police Station, Thiruvananthapuram.

Respondents Annexures :

1. R-1 : True copy of the letter No.BOCCS/00181/Q/CAN/5469/D (MOV) dated 27.10.1977 to the Chief of the Army Staff.
2. R-2 : True extract copy of para 52 of standing Operating Procedures for the URC.
3. R-3 : True extract copy of para 5 1(b) of the SOP for the URC.
4. R-4: True copy of paragraph 53 of the SOP of the URC.
5. R-5: True copy of the Bill No.11130 dated 31.12.1999.
6. R-6: True copy of the complaint dated 8.4.2000 signed by Manager, State Bank of India, Travancore.
7. R-7 : True copy of the statement rendered by the petitioner dated 29.4.2000.
8. R-8 : True copy of the Investigation Report signed by R.Suresh, Lt.Col. dated 29.4.2000.
9. R-9 : True copy of the Redressal of Grievances dated 13.10.1999 signed by K.J.Thomas.
10. R-10: True copy of the showcause notice dated 3.5.2000 of the National Cadet Corps Group Headquarters, Thiruvananthapuram - 10.
11. R-11: True copy of the reply by the petitioner to the show cause notice, dated 11.5.2000.
12. R-12: True extract copy of para 58 (a) & (b) of the URC.

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