

Central Administrative Tribunal, Lucknow Bench, Lucknow
M.P. No.2915/2005 in Dy. No.2827/2005

Reserved on.26.3.2014

Pronounced on 15 - 04, 2014

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms.Jayati Chandra,Member (A)

1. Ashok Kumar Gupta aged about 42 years son of late Sri Surendra Lal Mahajan resident of 333, Subhash Mohal, Sadar, Lucknow.
2. Rajesh Saxena aged about 45 years son of Sri Ram Mohan Saxena, resident of Bhai Jan Building, 1/B, Nehru Road Sadar Bazar, Lucknow Cantt., Lucknow.

By Advocate: Sri Amit Chandra Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chairman, Central Command Canteen, Lucknow.
3. General Manager, Hq, Central Command Canteen 7, Usman Road, Lucknow.
4. Canteen Officer, HQ, Central Command, Canteen 7, Usman Road, Lucknow.
5. J.S. Misra, Lt. Col. (Retd.), General Manager, Headquarters, Central Command Canteen 7 Usman Road, Lucknow.

By Advocate: Sri S.P.Singh Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i. To quash the orders of termination dated 25.7.1991 and 13.12.1991 as contained in Annexures No. 4 and 5 and the respondents be further commanded to take the applicants in the services with all consequential benefits.
- ii. Any other order or direction which this Hon'ble Tribunal may deem just and proper under the circumstances of the case may also be passed in the interest of justice.
- iii. To pay the cost of the original application.

2. The brief facts of the case are that the two applicants preferred the present O.A. challenging the termination order dated 25.7.1991 and 13.12.1991 as contained in Annexure Nos. 4 and 5 to the O.A. By means of an order dated 10.1.2006, one of the applicant i.e. Rajesh Saxena has withdrawn the O.A. without any liberty to file fresh O.A. Therefore, the joint prosecution application was not required to be allowed. Accordingly, the name of Rajesh Saxena was allowed to be deleted from the array of parties and C.A. was directed to be filed by the respondents with regard to maintainability of the O.A. The applicant Rajesh Saxena feeling aggrieved by the said order, preferred a writ petition No.684 (SB)/2006 before the Hon'ble High Court and the Hon'ble High Court vide order dated 14.9.2010, quashed the order dated 10.1.2006 and directed the Tribunal to decide the O.A. after providing due opportunity of hearing to the parties. Thereafter, the applicant moved M.P. No. 1995/2010 restoring the O.A. to its original number. The said application was filed by the applicant on 30.11.2010. The O.A. was listed on number of dates and when no one has appeared on behalf of the applicant to press the O.A. on merits, the Tribunal left with no other option except to dismiss the restoration application No. 1995 of 2010 and passed an order on 13.8.2013 dismissing the same. Subsequently, the applicant has again moved an application No. 2562/2013 for condonation of delay in filing restoration application along with M.P. No. 2653/2013 for restoration of order dated 13.8.2013 and for hearing of the O.A. on merits. When no one appeared again on behalf of the applicant to press M.Ps, the Tribunal was left with no other option again except to dismiss the restoration application No. 2653/2013 and M.P.No.2652/2013 for condonation of delay in filing restoration application vide order dated 21.11.2013. The applicant again moved an M.P. No. 2782/2013 with a prayer to restore the O.A. to its original number.

3. The respondents filed the preliminary objection as well as counter reply on 21.11.2005 and 17.5.2006 respectively. Through their counter reply, the respondents indicated that the applicant No.1 not only a habitual absentee but he was caught taking six dozen soaps illegally from the Military canteen in the month of November, 1989 and through his reply dated 18.11.89, he accepted the offence. He was also involved in shortage of thirty one bottles of rum and through reply dated 6.3.1991, he confessed having taking rum. The respondents given notice to the applicant No.1 on 13.1.89, 15.9.89, 23.10.89 and 2.5.91 but the applicant No.1 did not realized the gravity of serving in the Army canteen.

4. As regards applicant No.2 is concern, he was involved in a case of moral turpitude and the same was accepted by him. He was appointed in Nov., 1990 and terminated in December, 1991.

5. No rejoinder is filed by the applicants.

6. It is also seen from the record that another O.A.No. 74/92 which was filed by one Rajesh Saxena the said O.A. was dismissed as withdrawn by means of an order dated 15.7.1992. In the said O.A., the applicant has challenged the termination order dated 13.12.1991, terminating the services of the applicant. It is also to be seen that in the present O.A. also, the applicant Rajesh Saxena who is applicant No. 2 in the O.A. has challenged the termination order dated 13.12.1991. While dismissing the O.A. No. 74/1992, the applicant Sri Rajesh Saxena was not granted liberty to file a fresh O.A., as such it is clear that the case of the applicant is clearly barred by res-judicata. Since the Hon'ble High Court has directed the Tribunal to decide the O.A. after providing due opportunity of hearing to the parties, as such the learned counsel for parties are heard at length at this stage itself.

7. The applicants were initially appointed as Deliveryman in the pay scale of Rs. 350-15-550 and their services were terminated by means of order dated 25th July, 1991 and 13th December, 1991. The

bare reading of the appointment orders of the applicants, which are contained at Annexure No. A-1 and A-2 clearly show that the applicant No.1 was on probation for a period of three months during which his services can be terminated without any notice. The said appointment order was passed on 18th May, 1985 in respect of applicant No. 1 and the appointment order dated 27th November, 1990 is in respect of applicant No. 2 whose probation period is shown as six months which can be extended by the Management without giving any notice. It is also to be seen that the applicant No.2 was involved in the case of moral turpitude as per letter dated 4.9.1991 (Annexure A-3) which is established and the same was accepted by the applicant No.2 as well and requested to be excused.

8. The present O.A. is preferred by the applicant in the year 2005, whereas the orders impugned in the O.A. are of the year 1991 and the application for condonation of delay filed by the applicant does not show any justified reason to condone the delay in filing the O.A. Not only this, the conduct of the applicant is absolutely clear that after filing of the order of the Hon'ble High Court in 2010, no body appeared on behalf of the applicant to press the application which compelled the Tribunal to dismiss the restoration application in 13.8.2013 and another restoration application was moved by the applicant which was also dismissed on 21.11.2013.

9. On merits of the case, it is absolutely clear that the condition of the appointment order in respect of applicant No. 2 is absolutely clear that he will be on a probation for a period of six months and the applicant will be governed by the provisions contained in the canteen Standing orders and instructions issued by the management from time to time. The applicant was also involved in a case of moral turpitude and he accepted the guilt as well.

10. As regards, applicant No. 1 is concerned, he was charged of unauthorized absence from duties. He was given opportunity to defend

his case. The applicant was appointed vide order dated 18.5.1985 and his probation period is shown as 3 months. The learned counsel for the applicant failed to indicate any illegality in the impugned orders. As such, considering the terms of appointment and the delay in filing the case, we do not find any justified reason to interfere in the present Original Application.

11. Accordingly, M.P. and the O.A. is dismissed. No order as to costs.

J. Chandra

(JAYATI CHANDRA)
MEMBER (A)

Navneet Kumar

(NAVNEET KUMAR)
MEMBER (J)

HLS/-