

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP NO.55/2002 IN
OA NO.773/2001

10TH JULY, 2002


Shri P.V.Dhopatkar, Counsel for Applicant. Shri
V.S.Masurkar, Counsel for Respondents.

We have heard the Counsel for Applicant. The Learned Counsel for Applicant contends that respondents is liable for being punished for Contempt of Courts as he defended the OA on the ground that applicant was never employed while after disposal of OA, applicant has received letter of termination of service. On being pointed out that he might have committed an offence punishable under Section 193 of the Indian Penal Code and therefore he cannot be proceeded under Contempt of Court Act, to the learned counsel for applicant argued that though respondent is punishable under Section 193 of I.P.C., the respondent has committed Criminal Contempt and therefore he is liable to be punished under Section 15 of Contempt of Court Act. We have considered the arguments. In respect of an offence under I.P.C. no proceeding under Contempt of Court can be drawn. We are of the view that Section-9 of Contempt of Court does not permit court to take action under said Act.

Besides above fact no consent of Attorney General/Solicitor General or Additional Solicitor General has been filed in this case which is essential under Section 15(1)(a) of Contempt of Court Act.

For aforesaid reasons CP-55/2002 fails and is dismissed.

Let a certified copy of this order be issued in 48 hours to the parties.


(B.N.BAHADUR)
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 773 of 2001.

Dated this Wednesday the 3rd day of December 2003.

Medi Lal nee Munnalal Kanauji,

Applicant.

Shri P. V. Dhopatkar,

Advocate for
Applicant.

VERSUS

Union of India,

Respondent.


Shri V. S. Masurkar,

Advocate for
Respondents.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

- (i) To be referred to the Reporter or not ? —
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? —
- (iii) Library. ✓


(S.G. DESHMUKH)
MEMBER (J).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 773 of 2001.

Dated this Wednesday the 3rd day of December, 2003.

CORAM : Hon'ble Shri A. K. Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

Medi Lal nee Munnalal Kanauji,
Dhobi on INS Investigator,
Residing at C/o. Medilalk,
C.G. Dock Complex Laundry,
Ground Floor, Naval Dockyard,
Mumbai - 400 023.

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Applicant.

(By Advocate Shri P.V. Dhopatkhar)

VERSUS

● Union of India,
Ministry of Defence,
Lion Gate,
INV Investigator,
Mumbai - 400 001.

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Respondent.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

The present O.A. is filed by the applicant Medi Lal nee Munnalal Kanauji, a Dhobi on INS Investigator for setting aside the order dated 18.8.2001 whereby his services were terminated and for directing the respondent to regularise his services with consequential benefits. The applicant has further prayed that he may be allowed to resume his duties on INS Investigator, Naval Dockyard, Mumbai and be paid regular monthly salary.

2. The contention of applicant is that he was appointed as a Dhobhi on piece rated basis on Ship INS Darshak in the year 1979.

He was working there upto 1989 till the said ship was

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discommissioned. Thereafter he was transferred to INS Investigator at Vishakhapatnam and was working at ISN Investigator upto December, 1995. As the said ship was thereafter commissioned at Naval Dockyard in Mumbai, he came to Mumbai around September, 1995 and was working there from December 1995 till June 2001 i.e. till he proceeded on leave. He was working under the Command of P.P. Nandi, Captain, Commanding Officer. There were two junior Dhobhis under his supervision. He was issued Gate Pass valid at a time for three months and renewable thereafter. Accordingly he was getting it renewed. It is his contention that he took leave and went to his native place in June, 2001 and came back from his native place on 07.08.2001. He went to resume his duties but as his Gate Pass was not valid he was not allowed to enter. He got the message from the concerned office on INS through the Security Officer that the applicant should come next day and he will be issued the Gate Pass. Thereafter he has been presenting his person from time to time every day to resume his duties but he was not allowed to enter the area. By effecting the amendment in the O.A. the applicant stated that on return from his native place he found some envelope left at his door and on opening the same he found that it was a termination letter dated 18.08.2001 whereby his services were terminated by the respondents w.e.f. 12.06.2001 and thus this O.A.

3. The respondent through the counter-affidavit contend that the applicant was neither appointed by them nor engaged by them. He is not a holder of civil post and, therefore, this Tribunal has no jurisdiction to try and entertain the present application. In support of their stand, the respondent relied on the following judgements :

- (i) Union of India & Another V/s. Chottelal & Others
[AIR 199 SC 376].
- (ii) Union of India & Others V/s. M. Aslam & Others
[2001 (1) SCC 720]
- (iii) Rajan Uphaya Karala & Others V/s. Union of India
[O.A. No. 304/99 to 308/99 decided on 23.07.2001
by the Mumbai Bench of this Tribunal].

4. The respondent denied that the applicant was appointed as Dhobi in 1979 in the Indian Naval Ship, Darshak, in any manner as claimed. The applicant was doing business as Dhobhi in INS Investigator in 1989 at Vizag and in due course came to Mumbai in 1995 when the ship changed its base port. There was no question of granting any leave from the ship which is pertinent only in case of regular employee of the Indian Navy.

5. The applicant has also filed a rejoinder.

6. Heard the Learned Counsel, Shri P. V. Dhopatkar, for the applicant and Shri V. S. Masurkar, Learned Counsel for the Respondent. The Learned Counsel for the Applicant relied on the following judgements :

- (i) Dr. Smt. Kuntesh Gupta V/s. Management of Hindu Kanya Mahavidyalaya, Sitapur [AIR 1987 SC 2186]
- (ii) Union of India & Others V/s. M. Aslam & Others, etc.
[2001 (1) Supreme To-day 11]

7. Under Section 14(1)(a) of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal on and from the appointed day exercises jurisdiction in relation to the

recruitment, and matters concerning recruitment, to any All India Service or to any Civil service of the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian. In the instant case, the applicant was employed to wash the clothes on piece rate basis. The applicant did not bring on record any documents like letter for interview, letter of appointment, pay slip, etc. to show that he is a Government servant and has been employed by the respondent.

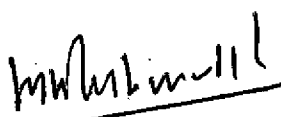
8. The moot point in this case is whether the applicant can be treated as holder of a civil post within the Ministry of Defence. This Tribunal will have requisite jurisdiction to adjudicate on the issues raised in the O.A. only if the answer to this question is in affirmative. The counsel for the applicant has cited a Supreme Court judgement dated 04.01.2001 (Union of India & Ors. V/s. M. Aslam & Others) wherein it was held by the Supreme Court that the employees of Unit run canteens are employees under the Government since the rules regulating the terms and conditions of service of such employees confers all pervasive control over the employees with the authority of Defence Services. However, in this very judgement, the Supreme Court has reiterated its earlier view expressed in Union of India & Anr. V/s. Chotelal & Others regarding the Dhobies who received payment out of the Regimental Fund. In Chotelal's case the Hon'ble Apex Court has observed that the Dhobis engaged in the National Defence Academy and being paid from the Regimental Fund, which is not a Public Fund as defined in para 801 of the Regulation Public Funds, cannot be held to be a holder of civil post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to their service conditions. We are of the considered view that the ruling of the Supreme Court in Chotelal's case is *h/v* relevant to the present case.


9. The applicant has mentioned in the O.A. that he has not availed of any of the remedies available to him under the relevant service rules as he did not expect any favourable outcome from it. This obviously is not a convincing argument. On the other hand, this indicates that the applicant himself had a doubt about his holding of a civil post under the Government.

10. The case of the applicant is entirely covered by the Supreme Court judgement in Chotelal's case as well as Rajan U. Karala's case decided by this Tribunal. The applicant is not a holder of civil post. No document in that respect is brought on record by the applicant. There is nothing on record to show that he has been employed by the respondent. The certificates produced by the applicant only indicate that he did the work of Dhobhi for some naval officers during certain period. These certificates in no way show that the applicant has been employed by the respondents. The gate pass produced by the applicant does not show that he is an employee of the respondents.

11. The applicant cannot be held to be a holder of civil post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to his service condition. The O.A. is, therefore, required to be dismissed for want of jurisdiction.

12. The O.A. is dismissed accordingly for want of jurisdiction. No order as to costs.


(S. G. DESHMUKH)
MEMBER (J).


(A. K. AGARWAL)
VICE-CHAIRMAN.