

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 63/97

Date of Decision : 17.6.03.

G.Chandrashekar

Applicant

Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the
Respondents

CORAM :

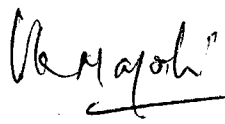
The Hon'ble Shri V.K.Majotra, Member (A)

The Hon'ble Shri Shanker Raju, Member (J)

(i) To be referred to the reporter or not ? X

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ? X

(iii) Library JS


(V.K.MAJOTRA)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.63/97

Dated this the 17th day of June 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

G.Chandrashekharan,
Driver,
College of Naval Warfare,
C/o Fleet Mail Office,
Mumbai.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Director of College of
Naval War-Fare,
C/o Fleet Mail Office,
Mumbai.
3. Subhedar Major,
Asstt.Garrison Engineer,
B/R No.III, Karanja,
M.E.S. - N.A.D. Karanja,
Dist. Raigad.
4. Commanding Officer,
I.N.S. Abhimanyu,
C/o Fleet Main Office,
Mumbai.
5. Director,
College of Naval Warfare,
C/o Fleet Mail Office,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

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O R D E R

{Per : Shri V.K.Majotra, Member (A)}

The applicant has been working since 24.7.1991 as Driver under Respondent No.2, the Director of College of Naval War-Fare (CNW) Mumbai. He was stopped from entering the CNW w.e.f. 2.11.1998. By application dated 30.9.1996 he sought regularisation of his services under Respondent No.2. His request was rejected by letter dated 30.10.1996 on the ground that there is no provision for regularisation of employees paid from the non-Government Fund. He had preferred OA.No.86/97 in the Central Administrative Tribunal, Mumbai. This application was rejected by this Tribunal on 6.7.2001 on the ground that applicant had not made an averment in the OA. that the College of Naval War-Fare is a part and parcel of Navy. The matter was carried to High Court of Judicature at Bombay through W.P.No.3761/2002 which was decided on 1.10.2002. The case was remanded to this Bench to enable the petitioner to carry out necessary amendments in application and so that the case is adjudicated upon on merit. In this backgraph, the applicant was allowed to make amendment in the OA. On 11.6.2003 when the matter was taken up for final disposal, respondents raised the issue whether this Court has jurisdiction over the matter. Learned counsel of both sides were heard in this regard. We have also perused the documents produced by the respondents relating to C.N.W. Sailors Welfare Association Fund (SWA Fund) as also to the payments made to the applicant in his capacity as Driver of Mini Bus C.N.W.

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2. Whereas the learned counsel of the applicant contended that the Mini Bus MZN-3881 belongs to College of Naval War-Fare which is an establishment of Govt. of India, the expenditure on the Mini bus and the applicant as Driver of the Mini Bus is being made from the College Fund which receives grants from the Consolidated Fund of India. The learned counsel further stated that C.N.W. has no source of its' own for generation of funds. On the other hand, learned counsel of the respondents contended that the Mini Bus has been purchased from non-public fund of C.N.W. It is privately owned (non-Govt.) by C.N.W. This fund has received a one time grant from the Government and thereafter it has been receiving contribution from the salaries and the income generated by hiring out of the Mini Bus.

3. We have perused the records relating to C.N.W. Fund as also those relating to payments made to applicant as Driver of Mini Bus of C.N.W. From these records, it is clear that the statement made by the respondents is true that this fund is not replenished from the Consolidated Fund of India and the applicant as a casual Bus Driver has been paid wages from this fund from time to time.

4. The following cases are relevant for adjudication of the case :-

(i) A.I.R. 1999 Supreme Court 376 -

Union of India & Anr. vs. Chotelal & Ors.

(ii) 2001 SCC (L&S) 302 -

Union of India & Ors. vs. M.Asalam & Ors.


Vh

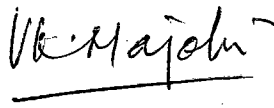
In the former case, it was held that Dhobis (Washermen) appointed to wash clothes of cadets in National Defence Academy do not become holders of civil post because of payment of salaries from regimental fund. Regimental fund is not public fund. Payment to Dhobis is therefore not out of Consolidated Fund of India or any public fund under the control of Ministry of Defence. It was held that Central Administrative Tribunal therefore has no jurisdiction to go into the question of service conditions of such Dhobis. In the latter case the issue related to status of employees of Unit-run Canteens of army, navy and air force and benefits of service to which they are entitled to. They were held to be Government servants having Master and Servant relationship between Unit-run Canteens of Army, Navy and Air Force of Govt. of India. It was held in the case that providing canteen facility to the defence personnel is obligatory on the part of the Government and in fact, the Unit-run canteen discharge the duty of retail outlets after getting their provisions from the wholesale outlet or depot of the Canteen Stores Department. The ratio in the case of Chotelal (supra) is irrelevant for the purpose of Unit-run canteens. It was found that the officers of the defence services have all-pervasive control over the Unit-run Canteen as well as the employees serving therein. A regular set of rules have been framed for their service conditions. The funding of articles were provided by Canteen Stores Department which itself is a part of the Ministry of Defence. In this background, the jurisdiction of the Tribunal to entertain application filed by the Unit-run Canteens was upheld.

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5. From the facts of the present case, it is apparent that C.N.W. has to provide bus facility to the officers and staff of the College. But the vehicle has been purchased out of non-public fund and the applicant as Driver has been paid monthly honorarium out of the non-public fund. This C.N.W., SWA Fund, as established by the records produced by the respondents, receives no provision from the Consolidated Fund of India. It has received a one time grant from the Government and this fund is replenished from the contribution made from time to time by Sailors, interest on fixed deposits, etc. When the fund has nothing to do with the public money or the Consolidated Fund of India and has its' own sources of generation of fund, i.e. Sailors' contributions and interest on fixed deposits etc. the ratio of the case of M. Aslam (supra) is not applicable to the facts of the present case. In view of the nature of the CNW(SWA) Fund, we have to conclude that it is not public fund in any manner and the Applicant paid out of such fund can't be held to be holder of a civil post. The ratio of the case of Chhotelal (supra) is certainly applicable to the instant case. Consequently, this Tribunal has no jurisdiction over the matter. As such, this OA. is dismissed for want of jurisdiction.


(SHANKER RAJU)
MEMBER (J)


(V.K. MAJOTRA)
MEMBER (A)

mrj.