

5/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 267/02
R.A/C.P No. 55103
E.P/M.A No. 128/02

CD CP 55103 andr page - 102 C.P. G.C. issued 26.2.2002

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SECTION OFFICER (Judl.)

Gahs
29/11/17

(SEE RULE 44)

**GENTRAL ADMINISTRATIVE TRIBURAL
GUWAHATI BENCH:**

ORDER SHEET

Original Application No. 267/02

Mise Petition No. /

Contempt Petition No. /

Review Application No. /

Applicants. G. B. Paul & Ors (5)

-Vs-

Respondant(s) U. C. I. Ors

Advocate for the Applicat(s) M. Chanda, G.N. Chakraborty
A. Datta, S. Ghosh.

Advocate for the Respondat(s) C.A.S.

Notes of the Registry	Date	Order of the Tribunal
	23.8.02	Heard Mr. M.Chanda, learned counsel for the applicants.
		The application is admitted. Call for the records.
		Issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by four weeks.
		In the meantime, Respondents are directed to allow the applicants to continue in their respective posts.
		List on 10.9.2002 for orders.
		<u>I.C.Usha</u> Member
		<u>Vice-Chairman</u>
Notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.D. Vide D.No - 2351 & 2356 Dd - 23.8.02 -	mb	

20.9.02

It has been stated by Mr.A.Deb Roy, Sr.C.G.S.C. that the copy of the written statement has served on to-day to Mr.Md Chanda learned counsel for the applicant. Accordingly, the case be listed for hearing on 5.11.02. In the meantime the applicant may file rejoinder if any, within two weeks. lm nk

The interim order dated 23.8.02 shall continue.

23.9.02lm

W/s submitted
by the Respondent

PD

24.10.2002

nkmVice-Chairman

As agreed by the learned counsel for the parties let this case be listed for hearing on 11.11.02 with M.P. 128/02.

IC Usha
Member17.10.02

An affidavit filed
by the Union of India.

PD11.11.2002

Heard at length, left the case alongwith the M.P. 128/02 on 18.11.2002 for further hearing.

M.DA.K. Sen11.11.200223/10/2002

Rejoinder was submitted
by the applicant to the
W/s submitted by the
Respondent R-C-6, P-8195.

AS
23/10/02lm

22/11: passed over.

M.DA.K. Sen22/11

23/11: went on 28/11/02 for hearing.

M.DA.K. Sen28/1128/11: place before next available
M.P. for hearing. M.D A.K. Sen

2.12.2002

Judgment pronounced in open

court, kept in separate sheets. The application is allowed. No order as to costs.

16.12.2002

Copy of the Judgment
has been sent to the
D.P.C.C. for issuing
the same to the
applicant as well as
to the D.C.G.S.C. &
the Registrars

4.1.8

H. U. Shaver
Member

Member

nkm

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXX. No.²⁶⁷ of 2002

DATE OF DECISION. 2nd Decem. 2002

Shri Gopal Ballav Paul and 4 others

APPLICANT(S)

Mr M. Chanda, Mr G.N. Chakraborty,
Mr H. Dutta and Mr S. Ghosh

ADVOCATE FOR THE APPLICANT(S)

VERSUS

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.,
Mr A.M. Bujar Barua and K.L. Solo

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches :

Judgment delivered by Hon'ble Vice-Chairman

L

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.267 of 2002

Date of decision: This the 2nd day of December 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

1. Shri Gopal Ballav Paul,
Spear Canteen, CSD,
H.W.C.L. Forces (NE),
C/o 99 APO.
2. Shri Diganta Sharma,
Spear Canteen, CSD,
H.W.C.L. Force (NE),
C/o 99 APO.
3. Shri Satya Ram Das,
Spear Canteen, CSD,
H.W.C.L. Force (NE),
C/o 99 APO.
4. Shri Sama Mazumdar,
S/o Shri H.K. Mazumdar,
P.O. Rangapahar Crossing,
District Dimapur (Nagaland).
5. Smti Gita Kumari,
Daughter of Shri Kailash Prasad,
Rangapahar Crossing,
District- Dimapur, Nagaland.Applicants

By Advocates Mr M. Chanda, Mr G.N. Chakraborty
H. Dutta and Mr S. Ghosh.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. The Director General,
Canteen Stores Department (CSD),
Army Headquarters,
New Delhi.
3. The Deputy Director General,
Canteen Service,
Canteen Stores Department (CSD),
Army Headquarters,
New Delhi.
4. The Major General, GOC,
Headquarter CI Force (NE),
C/o 99 APO.
5. The Vice President,
Spear Canteen, CSD,
Headquarter 3 Corps,
C/o 99 APO.
6. The Secretary,
Spear Canteen, CSD,
Headquarter 3 Corps,
C/o 99 APO.Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Mr A.M. Bujor Barua and K.L. Solo.

O R D E R

CHOWDHURY. J. (V.C.)

The applicants are five in number who joined together and filed this application pertaining to same cause of action with common interest in the matter. The grievance of the applicants centres round the change of condition of service in terms of Memo dated 10.2.2002 addressed to the five applicants in the following way:

"TERMS AND CONDITION OF SERVICES OF SPEAR
CSD CIVILIAN EMPLOYEES

You are considered for employment as casual emp in Spear CSD.

The terms and conditions are enclosed as Appx 'A' for your reference. You are requested to go through the terms and conditions and if acceptable to you, then please fwd the agreement as attached Appx 'B' duly signed to Spear CSD latest by 15 Feb 2002.

Your present service will be terminated on 26 Feb 2002 and you will be re-appointed with fresh terms and condition wef 01 Mar 2002, if accepted by you."

2. In the application the applicants pleaded that the respondents advertised in the year 2000 for filling up some posts of Salesmen in the Unit-run Canteen, i.e. the Spear CSD Canteen, Headquarter 3 Corps. In response to the applications submitted by the applicants for the post of Salesmen, they were interviewed and after selection they were appointed as Salesmen and all of them joined as Salesmen in the month of July 2000 except the applicant No.5 who joined in August 2000. Their formal appointment letters were issued on 4.12.2000 as Salesmen on temporary vacancies in Spear CSD Canteen. They were advised to return the attached willingness certificate, duly filled and signed. As per the terms the salary of Salesmen was fixed at Rs.1400/- per month. It mentioned the terms and

conditions of service. While things rested at this stage, the Hon'ble Supreme Court of India pronounced its Judgment on 4.1.2001 on Civil Appeals Nos.1039-40 of 1999 with C.A. Nos.1041 to 1043 of 1999. Union of India and others Vs. M. Aslam and others, reported in (2001) 1 SCC 720. The aforementioned appeals arose out of the Judgment and Order of the different Central Administrative Tribunals on the applications preferred by the employees of the Unit-run Canteens claiming benefit as regular defence personnel employees or at least as civilian employees serving under the Ministry of Defence claiming that the Unit-run Canteens (hereinafter referred to as URC) were part of the Canteen Stores Department. While dismissing the appeals of the Union of India, the Supreme Court observed that for effective functioning of the defence services it was absolutely necessary to provide canteen facilities throughout the country and while the Canteen Stores Department served as a wholesale outlet it was the URCs that served as retail outlet. It was also observed that though the funding of the URCs was not made out of the Consolidated Fund of India, but it was made by the CSD and the CSD in turn had formed a part of the Ministry of Defence. Referring to the principles of laid down by the Supreme Court in Parimal Chandra Raha Vs. LIC of India, reported in 1995 Supp (2) SCC 611, the Supreme Court also observed that it was difficult to conceive as to how the employees working in the URCs could be held to be not Government servants, when it had emerged that providing canteen facilities to the defence service personnel was obligatory on the part of the Government and, in fact, the URCs discharged the duty of retail outlets after getting their provision from the wholesale outlet or depot of the CSD. Distinguishing the

decision.....

decision of the Supreme Court in Union of India Vs. Chotelal, reported in (1999) 1 SCC 554, the Supreme Court held that the CSD formed a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it was the said CSD that provided the fund as well as different articles through the retail outlets of the Unit-run Canteens then the employees who discharged the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the defence services had all-pervasive control over the Unit-run Canteens as well as the employees serving therein. Accordingly, the Supreme Court observed as follows:

".....In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-run Canteens must be held to be that of a government employees.....

".....We, however, hold that these employees of the Unit-run Canteens will draw at the minimum (sic of) the regular scale of pay available to their counterparts in CSD and we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-run Canteens at an early date, preferably within six months from the date of this judgment."

3. In terms of the law laid down by the Supreme Court, the respondent authority issued policy guidelines and the Quarter Master General's Branch, Army Headquarters, New Delhi forwarded the terms and conditions of service of URC employees to the Command Headquarters and other authorities and instructed them to implement the same by all concerned. As per the said communication the terms and conditions were to come into effect with effect from 1.6.2001. The relevant part of the terms and conditions are cited below:

"The Supreme Court on 04 January 2001 while disposing the case of Union of India and Ors Vs. M. Aslam and Ors directed that employees of Unit Run Canteens (URCs) will draw at the minimum of the regular scale of Pay available to their counterparts in the CSD(1) and Union of India to determine service condition of the employees in the Unit Run Canteens. There are at present approx 2419 employees working.....

working in them all over India. Consequent to the judgment this paper lays down the guidelines on terms and conditions of URC employees.

These guidelines shall be called "The guidelines Regulating the Terms and Conditions of Service of Civilian Employees of URCs paid out of Non-Public Funds" and shall come into force with immediate effect. These guidelines shall apply to all civilian employees of URCs paid out of Non Public Fund Account but shall not be applicable to any person engaged on daily wages or on casual employment. These guidelines shall not be applicable to any Government employee, who may for the time being be detailed to work therein in any capacity whatsoever. For those employees who do not accept these terms and conditions, resignation from service as per provisions of Para 46 to 48 of guidelines can be accepted. Only in case of dispute, should cases be referred to auth given in Para 45 of these terms and conditions.

All employees shall be classified as under probation during their first year of service. On successful completion of one year of probation they shall be termed as temporary employees till five years of service (including the period of probation). On successful completion of five years of service, they shall be termed as permanent employees up to the age of superannuation or upto the date of resignation/termination of service.

All employees, whether under probation or temporary or permanent, could be treated at par with Govt. servants employed in CSD (1) as far as pay scales are concerned. All the employees are employees of URC and will remain so till the age of superannuation or till the date of resignation/termination of service. The classification of employees and the pay scales is given at Appx 'A'. The number of civilian employees require to run a URC will be determined by the employer.

A letter of appointment shall be issued in case of every fresh appointment. Classification of all civilians presently employed in URCs will be redesignated by a board of officers and a fresh appointment letter will be issued."

As per Appendix 'A' to the aforementioned terms and conditions, the scale of pay of URC employees, like LDC/Billing Clerk/Computer operator/Salesman/Accounts Clerk was fixed at Rs.3050-75-3950-80-4590.

4. The applicants had also pleaded that since July/August 2000 they were working as Salesmen and their services were extended by a subsequent agreement dated 1.3.2002. As per the second agreement dated 1.3.2002 the

applicants.....

applicants were reappointed as Salesmen for the period from 1.3.2002 to 31.8.2002. Subsequently, it was averred that respondent No.6 issued the impugned letter No.51905/SC dated 10.2.2002, which has been mentioned earlier, the legality and validity of which is under challenge in this proceeding as arbitrary and discriminatory. The applicants stated and contended that in terms of the Supreme Court directions, it was incumbent on the authorities to regularise their service as Salesmen in the Spear CSD Canteen in terms of the policy laid down by the Quarter Master General's Branch dated 14.9.2001. The applicants also assailed the impugned communication dated 10.2.2002 as arbitrary and discriminatory.

5. The respondents contested the claim of the applicants and submitted their written statement. In the written statement the respondents pleaded that the new terms and conditions were framed with an aim to reemploy the applicants as casual labourers on contract basis and the applicants refused to accept the terms and conditions framed by the Ministry of Defence pursuant to the directions of the Hon'ble Supreme Court. Since the applicants declined to accept the terms and conditions they were engaged by the URC as casual labourers on contractual basis. In para 6 of the written statement the respondents, in response to the pleadings mentioned in para 4.3 of the application, contended that the applicants were selected for employment against temporary vacancies and were appointed with effect from 4.12.2000. However, prior to that they were working as casual labourers with Spear CSD. In the written statement the respondents stated that pursuant to the Judgment of the Supreme Court and in accordance with the direction of the Supreme Court to

determine.....

determine the service conditions of the employees in the URCs at an early date, the Army Headquarters with due approval of the Ministry of Defence formulated the terms and conditions of the URC employees. It was also pleaded that according to those service conditions the employees already in service against the permanent vacancies under URC were to be absorbed in the URC as per probation/temporary or permanent employee depending upon the number of years of service they had put in, provided they accepted the terms and conditions laid down in letter dated 14.9.2001 issued by the Army Headquarters. Although the applicants did not fulfil the qualifications required for their employment on permanent basis since they were neither permanent nor employed against permanent vacancies, still the management supplied the terms and conditions framed by the Army Headquarters to the applicants and they were given option to either accept the terms and conditions of service or to choose to be employed as casual labourers. The respondents also pleaded about the reduction of the number of vacancies in para 13 of the written statement and averred that "the Spear CSD is basically meant to cater for needs of troops of HQ 3 Corps. with HQ 3 Corps and its units moving on OP Prakaram wef Dec 2001 there is drastic decrease in sales of the Canteen. There is a requirement of CSD Canteen with the HQ 3 Corps and spear CSD is likely to be closed and moved from here....."

6. We have heard Mr M. Chanda, learned counsel for the applicants and Mr A. Bujar Barua, learned counsel for the respondents at length. On consideration of the materials on record, it is apparent that on 4.1.2001, i.e. the date on which the Apex Court pronounced the judgment, these applicants were also working in the URC as Salesmen. The judgment of the Supreme Court pronounced the status of the

employees.....

employees of the URCs as Government employees. As per the directions in the judgment of the Apex Court, these employees were also to be allowed to draw a the minimum of the regular pay scale of the CSD. In terms of the judgment of the Supreme Court the Unin of India was to determine the service conditions of the employees of the URCs. As per the judgment, the responsibility was that of the Union of India to determine the service conditions of the employees of the URCs. As a matter of fact, the Quartermaster General's Branch circulated the terms and conditions of service vide memo dated 14.9.2001. It was incumbent on the authority to give effect to those terms and conditions of service. It did not depend on the volition of the employees. On perusal of the materials on record, we find it difficult to hold that the respondents offered them the benefit of the terms and conditions of service of URC employees promulgated by the Quartermaster General's Branch and the applicants refused to accept the same. As per the communication dated 14.9.2001, it was the respondents who were to take steps to implement the terms and conditions of service of URC and act as per directions of the Supreme Court including giving of the regular pay scale. The impugned orders whereby the conditions of service of the applicants were changed vide memo dated 10.2.2002 runs counter to the Judgment of the Supreme Court as well as the policy decisions laid down by the Quartermaster General's Branch vide memo dated 14.9.2001.

7. We have also perused the agreement forwarded with the order dated 10.2.2002 which was prepared by the respondent No.6 unilaterally. Acceptance of the terms and conditions mentioned in the memo dated 10.2.2002 by the applicants.....

applicants for want of their bargaining power by itself cannot estop the applicants to assail the legitimacy of the aforementioned order. The respondents instead of acting in terms of the Supreme Court directions and the policy laid down by the Quartermaster General's Branch, terminated the service of these applicants as Salesmen and appointed them afresh in terms and conditions of March 2002, which par se, is arbitrary and discriminatory. The impugned change in the terms and conditions of service issued by the respondents vide memo dated 10.2.2002 is in our view unsustainable in law. Therefore the said communication is liable to be set aside and thus the ~~same~~ ~~terms and conditions~~ set out in the communication dated 10.2.2002 stands quashed. The respondents are now directed to act as per law in the light of the decision rendered by the Supreme Court in the case of M. Aslam and others (Supra) and take necessary steps for implementation of the terms and conditions of service of Unit-run Canteen employees issued by the Quartermaster General's Branch vide memo dated 14.9.2001.

8. The application is thus allowed. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

21 AUG 2002

RECEIVED
CENTRAL ADMINISTRATIVE TRIBUNAL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case:

O. A. No 267 /2002

Sri Gopal Ballav Paul & Ors.

Applicant

- Versus -

Union of India & Others

Respondents.

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Filed by

Gopal Ballav Paul

Advocate

Date :

Gopal Ballav Paul

Filed by the applicant
Through Advocate Sri
G. C. Chakravarty
21-8-2002

16
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 267 /2002

BETWEEN

1. Sri Gopal Ballav Paul
Spear Cantten, CSD
H.W. C.I. Force(NE)
C/o 99 APO

2. Sri Diganta Sharma
Spear Cantten, CSD
H.W.C.I. Force(NE)
C/o 99 APO

3. Shri Satya Ram Das
Spear Cantten, CSD
H.W. C.I. Force(NE)
C/o 99 APO

4. Shri Sama Mazumdar
S/o Shri H.K. Mazumdar
P.O. Rangapahar Crossing

Gopal Ballav Paul

District Dimapur, (Nagaland)

PIN-797123

5. Smti Gita Kumari

Daughter of Shri Kailash Prasad,

Rangapahar Corssing

Thackhu village,

District-Dimapur (Nagaland)

...Applicants

-AND-

1. The Union of India,

Represented by the Secretary to the

Government of India, Ministry of Defence

New Delhi.

2. The Director general

Canteen Stores Department (CSD)

Army Headquarters,

New Delhi-110 001

3. The Deputy Director General

Canteen Service

Canteen Stores Department (CSD)

Gopal Ballav Paul

Army Headquarters,
New Delhi.

4. The Major General, GOC
Headquarter CI Force (NE)
C/o 99 APO

5. The Vice President
Spear Canteen, CSD
Headquarter 3 Crops
C/o 99 APO

6. The Secretary
Spear Canteen, CSD
Headquarter 3 Crops
C/o 99 APO

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned letter No. 51905/SC dated 10.02.2002 issued by the Respondent No.6 specifying the new Terms and Conditions of Services of Spear CSD Civilian Employees whereby the status of the present applicants have been changed and

Gopal Ballav Paul

reduced to casual employees with the deliberate and malafide intention of depriving the applicants of the benefits and avoiding the observations made by the Hon'ble Supreme Court pertaining to the CSD civilian employees vide its judgment passed on 04.01.2001 in U.O.I. & Ors Vs. M. Aslam & Ors. and thus a planned move by the respondents to oust the applicants from service under the name and colour of casual employees.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicant are citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the Respondent Department namely the Canteen Stores Department (for short CSD) under the Ministry of Defence, Government of India, displayed one

Gopal Ballav Paul

Post & Salesman

5

Advertisement in the Notice Board of the Army Cinema Hall, Rangapahar (in District Dimapur, Nagaland) in the year 2000 inviting applications for filling up some posts of Salesmen in their Unit-run Canteen i.e. the Spear CSD Canteen, Hq 3 Corps C/o 99 APO at Rangapahar, District-Dimapur, Nagaland.

4.3 That in response to the Advertisement aforesaid, your applicants applied for the posts of Salesmen and thereafter they were interviewed in the month of May and June, 2000 and were selected for appointment. Eventually they were appointed as Salesmen and accordingly all the applicants joined as Salesmen in the month of July 2000, excepting the applicant No. 5 only who joined in August, 2000. However, their formal appointment letters were issued on 04.12.2000 following an agreement signed by the applicants and the Employer on 4.12.2000. The terms and conditions of appointment being same for all the applicants, only two nos. of appointment letters are annexed herewith for reference.

31/12/2008

(Copy of appointment letters dated 4.12.2000 in the name of applicant No.1 and 3 are annexed herewith as Annexure I series).

4.4 That as per the terms of Appointment, the applicants were appointed against temporary vacancies and the appointments were made for a period of one year, and

Lopab Ballav Patel.

subject to further extension. It was however mentioned in the appointment letter that if salesmen are not required, then their services would be terminated with one month's notice.

4.5 That in the meantime, the Hon'ble Supreme Court while disposing of the Civil Appeals against some judgments of the Jodhpur and Mumbai Benches of the Hon'ble CAT in Union of India & Ors. Vs. M. Aslam & Ors. vide its judgment passed on 04.01.2001 in Civil Appeals Nos. 1039-40 of 1999 with Nos. 1041 to 1043 of 1999, partly allowed the appeals but directed the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-run Canteens of the Canteen Stores Department at an early date, preferably within six months from the date of judgment.

4.6 That in compliance with the aforesaid directions passed by the Hon'ble Supreme Court in its judgment dated 04.01.2001, the respondents formulated the Terms and conditions of services of Unit-run Canteen (URC) employees which was circulated by the Respondent No.3 vide order No. 96029/Q/DDGCS dated 14.9.2001. The service conditions detailed in the said order dated 14.9.01 provides inter alia under Para 5 and 6 as follows :

"5. All Employees shall be classified as under probation during their first year of

Gopal Ballav Paul

2/ 7

service. On successful completion of one year of probation they shall be termed as temporary employees till five years of service (including the period of probation). On successful completion of five years of service, they shall be termed as permanent employees up to the age of superannuation or up to the date of resignation/termination of service.

6. All employees, whether under probation or temporary or permanent, could be treated at par with Govt. servants employed in CSD (I) as far as pay scales are concerned. All the employees are employees of URC and will remain so till the age of superannuation or till the date of resignation/termination of service. The classification of employees and the pay scales is given at Appex "A". The number of civilian employees required to run a URC will be determined by the employer."

It was also provided in para 3 of the said order that these guidelines shall apply to all civilian employees of URC's paid out of Non-public Fund Account but shall not be applicable to any person engaged on daily wages or on casual employment.

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(Copy of order dated 14.9.2001 is annexed herewith as Annexure-II).

4.7 That pursuant to their appointment and agreement as stated in para 4.3 above, the applicants have been working since July/August, 2000 as Salesmen. Depending upon their performance, the services of the applicants were extended by another subsequent Agreement signed on 01.03.2002 and as per this second Agreement dated 01.03.2002, the applicants were reappointed as Salesmen for the period from 01.03.2002 to 31.08.2002.

4.8 That while extending the services for the second term with effect from 01.03.2002, the respondent no.6 issued the impugned letter No. 51905/SC dated 10.02.2002 notifying therewith some terms and condition of service of spear CSD civilian employees. In the said letter dated 10.02.2002, it was mentioned that the employment of the applicants with effect from 01.03.2002 would be termed as casual employment under fresh terms and conditions showing a clear departure from the original terms of appointment of the applicants who were appointed against Temporary vacancy and not as casual employees. This arbitrary action of the respondents smacks mala fide intentions and this sudden change of status of the applicants from Temporary employment to casual employment is made deliberately with the only intention of excluding the applicants from the applicability of the original service conditions

Gopal Ballav Paul

notified by the respondents for the URC employees vide their earlier order dated 14.09.2001 as stated in para 4.6 above and deprived the applicants of the normal service conditions like other URC employees as observed by the Hon'ble Supreme Court in its judgment dated 01.01.2001 for the URC employees declared as Government servants. It is pertinent to mention here that in the impugned order dated 10.02.2002 the status of the applicants have been altered to casual employees while their nature of works remained same as before and are of permanent type. The applicants being temporary employees of spear canteen and with the apprehension of loosing their job had accepted the impugned terms and conditions laid down in the impugned letter dated 10.2.2002. But the said terms and conditions are unconscionable in contract of employment and as such the letter/terms and conditions are liable to be modified.

Copy of impugned letter dated 10.02.02 is annexed herewith as **Annexure-III.**

4.9 That the applicants beg to state that as per their information from reliable source they could understand that pursuant to the directions/observations made by the Hon'ble Supreme Court in its judgment dated 04.01.2001 in U.O.I. & Ors. Vs. M.Aslam & Ors. (2001(1) SCC, Page-720), the respondents initiated the process for regularising the services of the applicants and the

Gopal Ballav Paul

mater reached almost to its final stage but all on a sudden, the respondents made a departure from the same and decided to man their URC with their army personnel and consequently issued the impugned letter dated 10.02.02 asking the applicants for entering into a new agreement for a new tenure of six months with effect from 01.03.2002 with fresh terms and conditions for casual employment. Needless to say that this action of the respondents is a part of their sinister move to oust the applicants from service.

4.10 That the applicants beg to submit that the said impugned letter dated 10.02.2002 engaging the applicants as casual employees with effect from 01.03.2002 in violation of the order dated 22.01.2002 and dated 25.01.2002 of the Army Headquarter whereby engagement as casual worker in any post had been banned and such casual engagement of the present applicants who have been already serving against temporary vacancies even prior to the notification of service conditions of URC employees, after being appointed through proper selection process is not at all tenable in terms of their own rules and is completely arbitrary, unjust and unfair and as such the action of the respondents are well indicative of their ultimate intention.

Gopal Ballav Paul

Copy of order dated 22.01.2002 and dated 25.01.2002 are annexed herewith as Annexure-IV and V respectively.

4.11 That as indicated above and as apprehended, it is now learnt from reliable source that the actions are afoot to terminate the services of the applicants by 31.08.2002 i.e. on completion of the present term of appointment and it is with this intention that the respondents altered the service conditions of the applicants arbitrarily by the impugned letter dated 10.02.2002 earlier, categorising them as casual employees.

4.12 That the applicants most humbly submit that they were appointed against temporary vacancies of Salesmen in the CSD Spear Canteen and that too after proper advertisement of the posts and following appropriate selection process. They have been rendering service as such for two years and have thus acquired a valuable right for regularisation in the post of Salesmen. The URC in which they have been working, is also running in a very healthy shape with a turnover of more than Rs. 35 lakhs per month i.e. More than 4 crores per year and as such it falls under Type "C" URC as per classification provided under para 4 of the order dated 14.9.2001 (Annexure-II). They were appointed as civilian employee under the CSD-URC and were paid ED pay which is also evident from the payment voucher for

Gopal Ballav Paul

the month of August, 2000 wherein the names of the applicants appear in Sl. No. q to u. This apart under the service conditions of URC employees as spelt out in para 5 of the order dated 14.9.2001 by the Respondents, an employee on successful completion of one year of service shall be termed as temporary employees and as such the present applicants have already acquired the right for being regularised in their present post as temporary employees.

Situated thus, the applicants approached the respondents time and again for regularisation of their services but to no avail.

Copy of payment voucher dated 01.09.2000 for the month of August, 2000 is annexed herewith as **Annexure-VI.**

4.13 That your applicants beg to state that due to non-consideration of their case for regularisation of their services as salesmen by the respondents, the applicants have been incurring financial loss and service prospects. As such finding no other alternative and apprehending the imminent termination of their services, the applicants are approaching this Hon'ble Tribunal for protection of their legitimate right and interest and praying for a direction upon the respondents to regularise the services of the applicants as Salesmen in the URC of the CSD.

Gopal Ballav Paul

4.14 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the applicants were appointed against temporary vacancies of Salesmen in the Unit-run Canteen under the CSD.

5.2 For that, their appointments were pursuant to the formal advertisement of the posts and following appropriate selection process i.e. interview etc.

5.3 For that, they have been rendering services as Salesmen on temporary employment for last two years and have thus acquired a valuable right for their regularisation.

5.4 For that, the claims of the applicants gain support from the judgment passed by the Jodhpur Bench of the Hon'ble CAT in O.A. No. 157 of 1993 and O.A. No. 333 of 1994 wherein it was held that the employees of the URC are Government employees and are entitled for pay and all benefits and service conditions available to the other regular Government employees in the CSD.

5.5 For that, the Hon'ble Supreme court also upheld the above view of the Hon'ble CAT to the extent that the URC employees are Government employees and will draw at

Gopal Ballav Paul

the minimum of the regular scale of pay available to their counterparts in CSD and directed Ministry of Defence, G.O.I. to determine the service conditions of the URC employees within six months from the date of judgment.

5.6 For that, as per the service conditions of URC employees notified by the Respondent department, an employee on successful completion of one year of service shall be termed as temporary employees as evident from para 5 of the order dated 14.9.2001 (Annexure-II), which the applicants have qualified.

5.7 For that the applicants repeatedly approached the authorities praying for regularisation of their services but to no avail.

5.8 For that the Unit-run Canteen in which the applicants are working are running in a very healthy shape with an annual turn over of more than Rs. 4 crores and falls under category 'C' as per the classification.

5.9 For that the appointment of the applicants as casual employee with effect from 01.03.2002 after the applicant had rendered services as temporary employee for more than one year is mala fide and unfair and violative of the orders dated 22.01.02 and 25.01.02 (Annexure IV and V respectively) of the respondents themselves whereby the casual employment in any post was banned.

Gopal Ballav Paul

5.10 For that the changing of status of the applicants and declaring them as casual employees is a planned move with mala fide intention which is arbitrary, unfair and violative of the principles of natural justice.

6. Details of remedies exhausted.

That the applicants state that there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and

Gopal Ballav Paul

after hearing the parties on, the cause or causes that may be shown, be pleased to grant the following relief(s):

- 3.1 That the respondents be directed to modify their impugned letter No. 51905/SC dated 10.02.2002 to the extent that the applicants be shown as appointed against temporary vacancies as per their Original appointment and not as casual employment.
- 3.2 That the respondents be directed to regularise the services of the applicants as Salesmen in Spear OSD Canteen in terms of the direction contained in the letter bearing No. 96029/Q/DDGCS dated 14.9.2001, following the direction of the Apex Court passed in the case of Union of India &Ors. Vs. Md. Aslam & Ors. in Civil Appeal No. 1039-40 of 1999.
- 3.3 That the respondents be directed to allow the applicant to continue in service till the services are regularized in terms of prayer no. 3.2.
- 3.4 Costs of the application.
- 3.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Gopal Bolla Patel.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to direct the respondents not to oust the applicants from their existing posts of Salesmen and allow them to continue as such till the disposal of this O.A.

9.2 That the Hon'ble Tribunal be pleased to observe that pendency of this application shall not be a bar for the respondents in considering the case of the applicants for regularisation of services.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. : TG 576588.

ii) Date of Issue : 2-8-2002.

iii) Issued from : Guwahati.

iv) Payable at : Guwahati.

12. List of enclosures.

As given in the index.

Gopal Ballav Paul

VERIFICATION

I, Shri Gopal Ballav Paul, Son of Late Gopi Mohan Paul, aged about 34 years, presently working as Salesman in Spear Canteen CSD, HQ, CI Force (NE), c/o 99 APO, one of the applicants in the instant application duly authorized by the other applicants to verify the statements made in this application and to sign this verification. Accordingly I declare that the statements made in paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to My legal advice which I believe to be true. I have not suppressed any material fact.

And I sign this verification on this the 21st day of Aug, 2002. *Gopal Ballav Paul*

Spear CSD Canteen
HQ 3 corps
C/O 99 APD

04 Dec. 2000

51905/SC

Mr. Gopal Ballav paul
S/o Mohan paul

4.12.000 to 4.12.001

May be extended to another

APPOINTMENT OF SALESMAN : SPEAR CSD CANTEEN

1. Reference your application for the post of salesman in Spear CSD Canteen.
2. The Vice President Spear CSD canteen is to inform you that you are hereby offered the post of salesman on a temporary vacancy in Spear CSD Canteen.
3. You are requested to return the attached willingness certificate, duly filled and signed.
4. You will be paid salary at the scale of Rs 1400/- per month.
5. Your terms of engagement are as under :-
 - (a) Subject to the provisions of this agreement the engagement is intended for a period of one year.
 - (b) One year's period may be extended to another one year if the salesman required by CSD Canteen.
 - (c) If salesman is not required by the Spear CSD Canteen, only one month notice will be served for the termination of service.
 - (d) You go through the CSD Rules and Regulations (Copy held with CSD Canteen Office) and Standing Operating Procedure of Spear CSD. A Certificate to this effect that you have read the rules and regulations and understood all terms and conditions mentioned therein and you undertake to abide by the same be forward to this CSD Canteen duly signed.

C S D Rules & Rank
Stand operating proc

Blistered
Advocate

(A Garg)
Lt Col
Vice President
Spear CSD Canteen

corr/P-35

WILLINGNESS CERTIFICATE
BY THE EMPLOYEE

1. Please refer to your appointment letter No 51905/SC dated 04 Dec 2000.
2. I, Mr Gopal Ballav Paul S/O Shri Mohan Paul willing/not willing to join the duty as salesman in Spear CSD Canteen on a temporary vacancy for a period of one year.
3. I, Mr Gopal Ballav Paul undertake to abide by the rules and Regulations of the Spear CSD Canteen and shall serve the Spear CSD Canteen for one year.
4. I shall not claim any TA/DA for conveyance from residence to Spear CSD Canteen.
5. I shall not claim for permanent appointment of the subject post.

Signature

Gopal Ballav Paul

Name Gopal Ballav Paul

Station : C/O 99 APO

Dated : 04 Dec 2000

corr/P-36

*Divided
Jawahar
A.S. Sircar*

Spear CSD Canteen
HQ 3 Corps
C/O 99 APO

S1905/SC

09 Dec 2000

Mr. Satyaram Das

S/o Shri Huse Kumar Das

APPOINTMENT OF SALESMAN : SPEAR CSD CANTEEN

1. Reference your application for the post of salesman in Spear CSD Canteen.
2. The Vice President Spear CSD canteen is to inform you that you are hereby offered the post of salesman on a temporary vacancy in Spear CSD Canteen.
3. You are requested to return the attached willingness certificate, duly filled and signed.
4. You will be paid salary at the scale of Rs 1400/- per month.
5. Your terms of engagement are as under : -
 - (a) Subject to the provisions of this agreement the employee is engaged for a period of one year.
 - (b) One year's period may be extended to another one year if the salesman required by CSD Canteen.
 - (c) If salesman is not required by the Spear CSD Canteen, only one month notice will be served for the termination of service.
 - (d) You go through the CSD Rules and Regulations (Copy held with CSD Canteen Office) and Standing Operating Procedure of Spear CSD. A Certificate to this effect that you have read the rules and regulations and understood all terms and conditions mentioned therein and you undertake to abide by the same be forward to this CSD Canteen duly signed.

*Accepted
Mr. Dasgupta*

W
(A Garg)
Lt Col
Vice President
Spear CSD Canteen

WILLINGNESS CERTIFICATE
BY THE EMPLOYEE

1. Please refer to your appointment letter No 51985/SC dated 04 Dec 2000.

2. I, Mr Satyaram Das S/O Shri Harkumar Das willing/not willing to join the duty as salesman in Spear CSD Canteen on a temporary vacancy for a period of one year.

3. I, Mr Satyaram Das undertake to abide by the rules and Regulations of the Spear CSD Canteen and shall serve the Spear CSD Canteen for one year.

4. I shall not claim any TA/DA for conveyance from residence to Spear CSD Canteen.

5. I shall not claim for permanent appointment of the subject post.

Station : C70 99 APO

Signature S. Das

Dated : 04 Dec 2000

Name Satyaram Das

corr/P-36

*Blstd
S. Das
Advocate*

Quartermaster General's Branch
Dy Dte Gen Canteen Services,
Army Headquarters
New Delhi - 110 001.

ANNEXURE-II

NO. 96029/Q/DDGCS

Headquarters

Southern Command
Eastern Command
Western Command
Central Command
Northern Command
Army Training Command
Naval HQ (Dte of Pers)
Air HQ (Dte of Org)
COAST Guard
DG NCC

14 Sep'2001

TERMS AND CONDITIONS OF SERVICES
OF URC EMPLOYEES.

1. Reference Hon'ble Supreme Court Judgement dated 04 Jan 2001 in the case of Union of India and ors Vs M. Aslam and ors.
2. The Terms and Conditions of Service of Unit Run Canteen employees duly approved by Ministry of Defence are forwarded herewith for implementation by all concerned. These Terms and Conditions will come into effect w.e.f. 01 JUNE 2001.
3. Please ack.

Encl: n/a

Copy to :-

CSD HO, Mumbai

(Rajeshwar Singh)
Brigadier
Dy Director General
Canteen Services

When The terms were
Sear.

Pls. check
Advocat (D)

Not applicable to engage on daily wages or casual Empl.
TERMS AND CONDITIONS OF SERVICE
OF URC EMPLOYEES

2419 Em

GENERAL

1. The Supreme Court on 04 January 2001 while disposing the case of Union of India and Ors Vs M. Aslam and Ors directed that employees of Unit Run Canteens(URCs) will draw at the minimum of the regular scale of Pay available to their counter parts in the CSD(I) and Union of India to determine service condition of the employees in the Unit Run Canteens. There are at present approx 2419 employees working in them all over India. Consequent to the judgement this paper lays down the guidelines on terms and conditions of URC employees.]

AIM

2. The aim of these guidelines is to have uniformity and to incorporate statutory provisions.

APPLICABILITY

1. From 01.01.2001

3. These guidelines shall be called "The guidelines Regulating the Terms and Conditions of Service of Civilian Employees of URCs paid out of Non-Public Funds" and shall come into force with immediate effect. These guidelines shall apply to all civilian employees of URCs paid out of Non Public Fund Account but shall not be applicable to any person engaged on daily wages or on casual employment. These guidelines shall not be applicable to any Government employee, who may for the time being be detailed to work therein in any capacity whatsoever. For those employees who do not accept these terms and conditions, resignation from service as per provisions of Para 46 to 48 of guidelines can be accepted. Only in case of dispute, should cases be referred to auth given in Para 45 of these terms and conditions.]

CLASSIFICATION OF URCs

If w/ a (cept) Resignation can be accept

4. The turnover of the URCs varies from Rs. 3 lacs to 25 crores. Therefore there is a need to classify the URCs based on the turnover of the canteen, as the profit earned may not be sufficient enough to pay the employees if they are not graded. The URCs are classified as :-

Type A

Above Rs. 15 Crores

Type B

Rs. 5 to 15 Crores

Type C

Less than Rs. 5 Crores

Blessed
Jas.
Advocate

para 46 / 48.

Contd...

Classification of Employees

2. " employees shall be classified as under probation during their first year of service. On successful completion of one year of probation, they shall be termed as temporary employees till five years of service (including the period of probation). On successful completion of five years of service, they shall be termed as permanent employees up to the age of superannuation or upto the date of resignation/termination of service.

3. All employees, whether under probation or temporary or permanent, could be treated at par with Govt. servants employed in CSD (I) as far as pay scales are concerned. All the employees are employees of URC and will remain so till the age of superannuation or till the date of resignation/termination of service. The classification of employees and the pay scales is given at Appx 'A'. The number of civilian employees required to run a URC will be determined by the employer.

Appointment

Fresh appointment to be SCD !

7. The employer will be the appointing authority who shall make all appointments, as on required basis.

8. The employer will be the local authority (Fman Cdr/ Stn Cdr/ any officer deputed and their equivalents in Navy and Air Force) under whose jurisdiction the URC has been established and functioning.

9. A letter of appointment shall be issued in case of every fresh appointment. Classification of all civilians presently employed in URCs will be re-designated by a board of officers and a fresh appointment letter will be issued.

Reders

10. Every person, before joining shall be required to produce a certificate of medical fitness from a registered medical practitioner that he is not suffering from any communicable or contagious disease. If a Service Medical Officer declares him to be suffering from any communicable or contagious disease, he shall not be employed, notwithstanding the certificate of medical fitness given by registered medical practitioner.

11. Every person, before joining, shall also be required to furnish certificate of good character from the two gazetted Officers or Members of Parliament/ State Legislature/ Corporation/ Municipal Committee, who are not related to him.

12. All recruitment of staff will be done by a selection board nominated by the appointing authority. Charter of duties of each appointee will be mentioned in rules and regulations to be framed by employer as mentioned in Para -56.

UNIT RVn Canteen Contd...

Pls. see para 56

Probation

13. Every employee, on initial appointment to any post, shall be appointed on probation for a period of one year, which in appropriate cases, may be extended to two years. On completion of stipulated period of probation, an employee may be confirmed in his appointment by issuing a letter of confirmation, if his work as well as conduct, has been considered satisfactory. Mere completion of probation period shall not amount to automatic confirmation. Employees, who have completed probation period but have not been confirmed, would still deemed to be on probation until confirmed or their services dispensed with. During probation the appointing authority may in its discretion terminate the services of the employees probation without assigning any reason whatsoever.

Fidelity Bond/Cash Security

14. A person before joining may be required to furnish a fidelity bond and/or cash security for amount(s) as may be specified by the appointing authority on or before the date stated in the appointment letter failing which the appointment letter shall be deemed to have been cancelled.

15. Forfeiture of cash security may be ordered to the extent as may be specified by appointing authority for violation of any of these guidelines.

16. An employee is to abide by all such orders on security as may be issued from time to time by the local authority where the canteen is located.

Hours of Work and Closed Days

17. Every employee shall be required to perform work for a period not more than 48 hours in a week as may be fixed by the appointing authority from time to time.

18. One day shall be given as weekly holiday. 9 closed holidays will be observed as specified by the employer.

Leave

19. Leave is a privilege and cannot be claimed as a matter of right. It shall be granted subject to exigencies of local canteens.

20. Leave admissible to an employee shall be of the following five types only:

(i) Casual Leave: An employee shall be entitled to a total of 8 days casual leave in a calendar year.

After 1st June 2000

Confid...

During the first and last year of his service, it shall be calculated proportionately to the actual service during that year, Casual leave shall not be carried forward to the next calendar year or be accumulated. Un-availed portion of Casual leave in any calendar year will expire. Casual leave shall be deemed as the period spent on duty with full pay and allowances.

(b) **Privilege Leave:** An employee shall be eligible for Privilege leave for a total period of twenty days in a year. Privilege leave, not availed by the employees, can be accumulated to a maximum of sixty days which may be encashed on termination/superannuation of services. During the first and the last year of the service, privilege leave shall be calculated proportionate to the actual service during that year.

(c) **Leave without pay:** In appropriate case, leave not due may be regularized as leave without pay for a maximum period of ninety days at the discretion of the appointing authority.

(d) **Maternity Leave:** Female employees shall be eligible for maternity leave for a total period of ninety days with full pay and allowances. This leave can be granted twice only during the entire period of service.

(e) **Sick Leave:** Sick leave on account of sickness for a maximum period of 10 days can be granted in a year. Sick leave will be granted only when recommended by Authorised Medical Practitioner. 50% of pay will be granted for the duration of period of sick leave. Sick leave can not be accumulated.

21. Leave of absence of any kind shall not be deemed to have been sanctioned, unless its approval has been communicated to the employee either verbally or in writing.

22. If an employee, while on leave, desires an extension thereof he shall apply sufficiently in advance before the expiry of his leave, so that its approval or otherwise, can be communicated before the leave already sanctioned expires. Extension of leave shall not be deemed to have been sanctioned unless the approval is actually communicated. The employees must report for duty in time when the leave already sanctioned expires, unless it has been duly extended as stated above.

for Reference
Fitness for Work

23. If the appointing authority is satisfied that an employee is suffering from a communicable or contagious disease, he shall have the right to refer him to service/Civil Medical Authority in the district. The services of the employee shall be liable to be terminated if by virtue of such sickness, he is unfit to perform his duties satisfactorily.

24. Also if an individual is physically incapable of carrying out task assigned to him his services may be terminated at the discretion of the competent authority.

Wages

25. The initial pay of an employee (inclusive of all allowances) shall be the pay as specified in Appendix 'A' to this rules.

26. The monthly wages of an employee shall be paid on a working day between first and seventh day the following month. //

27. Where the employment of any person is terminated, the wages earned by him shall be paid, subject to other conditions of his services.

28. The employee shall be entitled to the increments as per the relevant pay scale mentioned in appendix 'A' on an annual basis and necessary sanction by the appointing authority. No pension will be granted to an employee after retirement.

Deductions Which May be Made from Wages

29. The wages of an employee shall be paid to him without deduction of any kind except those as specified in Para 30 below.

30. Deductions from the wages of any employee may be made for one or more of the following persons:-

- (a) Deduction for the period of absence from duty or leave without pay.
- (b) Deduction for the recovery of advances or for adjustment of over payment of wages. In no case, monthly deduction on this account shall exceed half of the wages earned in that month.
- (c) Deduction required to be made by order of Court or other competent authority. Competent authority for this purpose shall be the appointing authority.
- (d) Deduction of Income Tax, if payable by the employee.
- (e) Cost of damage or amount of loss of goods entrusted to the employee or for the loss of money which he is required to account, where such damage or loss is attributable to his negligence or default or inadequate supervision. Loss due to misappropriation/fraud attributed to the employee by the employer.

*Approved
Dear Sir
D.S.O.C.A.*

Contd..

Medical facilities, House Rent Allowance or Conveyance Allowance

31. No Medical Facility, House Rent Allowance is admissible. No accommodation, either free or on payment rent, shall be provided.

32. An employee shall be entitled to payment of second class rail fare for his rail travel in connection with the performance of his duties. Likewise, he shall be entitled to payment of ordinary bus fare for travel by bus. Besides, he shall be paid an allowance for his other incidental expenses at the rate, which may be specified by the appointing authority. However, conveyance allowance is not admissible for commuting from Residence to place of duty and vice versa.

Conduct of employees

33. Every employee shall normally work under the direction and supervision of employer or any person authorised by him on his behalf and shall perform such duties connected with his employment, as may be assigned to him by the said officer or person. Employees shall not indulge, either directly or indirectly, in any trade, commerce or business activity or any other employment.

Act of Commission/Omission Constituting Misconduct

34. The following acts of commission/omission shall constitute misconduct:-

- (a) Contravention of any regulations made by the employer or other order issued from time to time.
- (b) Any act/omission which constitutes an offence under any law for the time being in force in the country.

PLACING AN EMPLOYEE ON LEAVE WITHOUT PAY

35. Appointing Authority or any authority to which it is subordinate, may place a URC employee on leave without pay:-

- (a) Where disciplinary proceeding against him is contemplated or is pending.
- (b) Where, in the opinion of the aforesaid authority, he has engaged himself in activities prejudicial to the interest of the security of State, Service or the URC.
- (c) Where a case against him in respect of any criminal offence is under investigation or inquiry or trial.
- (d) Where an URC employee is not available for work beyond the specified period of sick leave.

36. A URC employee shall be deemed to be on leave without pay if he is detained in civil custody, or is sentenced to imprisonment for a period exceeding 48 hours. Such URC employee will make himself available for investigation and inquiry.

37. The services of such URC employee may be terminated by the employer if such leave without pay exceeds 90 days.

Punishment for 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 loss caused by him to the URC/ Govt. India.
- (c) Withholding of one or more increments upto a period of three years.
- (d) Removal/ dismissal from service.

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 30-e & 39 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 guide lines should not be awarded to him.

Contd...

*Revised
Approved*

- (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'.

Review of the Punishment

12. No appeal against the orders of the disciplinary authority will be entertained unless it is preferred within a period of forty five days from the date on which the order of disciplinary authority is intimated to the employee.

43. The appellate authority may either suo motu or on an appeal from the individual, review any order of the disciplinary authority and on such review, pass any order or issue any direction as it in the circumstances of the case deems fit.

44. Any other order passed or direction issued by the appellate authority under this guidelines shall be final.

Appellate Authority

45. The appellate authority will be the authority superior in the chain of Command.

Resignation

46. An employee may resign his post after giving one month's notice in writing or pay in lieu thereof to the appointing authority. The notice shall be effective from the date on which it is received by the appointing authority.

47. The employee shall be liable to pay the salary for the period by which the said notice falls short of the time stipulated in Para 46 above. This amount shall be computed according to the salary (i.e. pay and allowances) last drawn by the employee.

48. The amount due from an employee under Para 47 and 48 above may be adjusted against any sum due to the employee including balance of his salary, security etc.

Conclusion

Peter C. Foy
Advocate

Termination of Service

49. The appointing authority may terminate the services of an employee by giving an one month notice in writing or pay in lieu thereof without assigning any reasons. Three months notices or pay in lieu thereof without assigning any reasons will need to be given where an employee has rendered five years of service or is confirmed/ permanent employee.

50. Nothing in Para 49 shall apply to removal/dismissal for misconduct.

Superannuation

51. An employee shall be superannuated on attaining the age of 58 years. Yearly extension may be granted at the discretion of the appointing authority subject to medical fitness and proficiency in the job upto a maximum of 60 years of age.

52. The age as mentioned in the High School or Higher Secondary Certificate shall be considered as the age of the purpose of Para 51. In case of any employee who has not passed the High School/Higer Secondary or equivalent examination, the certificate of age provided by either by District Magistrate or Sub-Divisional Magistrate, Block Development Officer or Panchayat Pramukh shall be treated as proof of age.

Interpretation

53. Should any doubt arise about the meaning of any one or more of these guidelines it shall be referred to issuing authority of these guidelines.

Shifting/Interchange of Canteen Personnel within the URCs falling under the Appointing Authority

54. URCs employees are subject to transfer within the Command from one URC to another. Such pers who are shifted from one URC to a URC located at a different location will be paid second class fare / Govt Bus Fare for the employee himself, spouse and bonafide children on production of necessary travel document regarding actual performance of journey. The employee also shall be granted joining time of 7 days with full pay and allowances and one months basic pay as transfer grant. The employee shall also be entitled to draw advance from the employer to perform such journey. Whenever a URC moves out from one place to another due to exigencies of service the employees of that particular URC will also move alongwith URC. Services of any employee refusing to do so can be terminated.

Alfred J. D'Souza

Contd..

55. URC employee has an option to accept such transfer or resign from service. Refusal to exercise any of the options the appointing authority will have the right to terminate the services of such employee.

FRAMING OF RULES BY EMPLOYER

56. The employer will formulate rules, regulations and SOPs interparating all the above guidelines to facilitate day to day functioning of the URCs. Rules, regulations and Standing Operating Procedure so formulated by the employer will be the legal document which will govern the terms and conditions of the service of the URC employees.

Disbandment/Permanent Closure/Mov of URCs.

57. On disbandment/ permanent closure of URCs/Mov of URCs due to any reason what so ever the services of the employees liable to be terminated.

Jurisdiction for legal dispute

58. Any legal dispute arising between the employee and employer will be submitted to jurisdiction of local Courts.

Amendment

59. Issuing authority of these guidelines reserves the right to cancel, vary, amend or add to these guidelines.

*After 6th
After 6th
After 6th*

PAY SCALES OF URC EMPLOYEES

1.	Peon/Watchman/Mali/ Safaiwala/Mazdoor/Helper/Lasker	-2550-55-2660-60-3200
2.	Sale attendant/Technician	-2650-65-3300-70-4000
3.	LDC/Billing Clk/ Computer operator/ <u>Salesman</u> / Accounts Clerk	-3050-75-3950-80-4590
4.	UDC/Cashier/Accounts Assistant/ Store Keeper	-4000-100-6000
5.	Accountant Type A	-5500-175-9000
6.	Accountant Type B	-5000-150-8000
7.	Accountant Type C	-4500-124-7000
8.	Assistant Manager Type A	-6500-200-10500
9.	Assistant Manager Type B	-5500-175-9000
10.	Assistant Manager Type C	-5000-150-8000
11.	Manager Type A	-8000-275-13500
12.	Manager Type B	-6500-200-10500
13.	Manager Type C	-5500-175-9000

*Approved
J.W.
Parikh*

Spear CSD
HQ 3 Corps

AS1905/SC

10 Feb 2002

Miss Gita Kumari

Mr D Sharma

Mr S Majumder

Mr GE Paul

Mr S Daz

As if he is
appointeeTERMS AND CONDITION OF SERVICES OF SPEAR CSD
CIVILIANS EMPLOYEES

1. You are considered for employment as casual emp in Spear CSD.
2. The terms and conditions are enclosed as Appx 'A' for your reference. You are requested to go through the terms and condition and if acceptable to you, then please fwd the agreement as attached Appx 'B' duly signed to Spear CSD latest by 15 Feb 2002.
3. Your present service will be terminated on 26 Feb 2002 and you will be re-appointed with fresh terms and condition wef 01 Mar 2002, if accepted by you.

Where is the
Appendix BForward the
Agreement(Hukam Singh)
Major
Secy Spear CSD

Is it in
After 1st
10 days
of work
present
Your Service as
Salesman will be
terminated on 26.2.02
& Appoint w.e.f. from
1/3/02

Forward the agreement - Agreement
prepared by you

What steps in between
14.9.01 to 10.2.02

TERMS AND CONDITION OF SERVICES OF SPEAR CSD CIVILIANS
EMPLOYEES

1. Appointment

(a) You are appointed on purely contractual basis as casual labour.

(b) Apart from performing the duties of the grade in which you are employed. You will also be responsible for the maintenance of the stores, general upkeep of area, general cleanliness, display of stores and also other such duties as may be assigned to you by the president/vice President/Secy/Mot Spear CSD.

(c) It is abundantly made clear that the assignment is purely on contractual basis and of temporary nature and confers no right of appointment on your placement in the cadre of URC employees.

(d) Your continuation in this contractual appointment is subjected to your satisfactory conduct and performance.

(e) Your continuation in this contractual appointment is subjected to your continued medical fitness.

(f) You will not communicate to any other pers either directly or indirectly to any aspect concerning to the mil/mil stn. Any violation may lead to institution of legal proceeding against you.

(g) Wage will be proportionately deducted for any un-auth absence and contract may be terminated at the discretion of appointing authority.

(h) You will be required to assist in the stock taking of the Spear CSD.

(i) Your contractual appointment made vide this letter will automatically cease after the purpose for which the present offer made is achieved.

2. Fees/Honorarium

(a) You will be given a daily wage at the rate of R 60/- per day during your period of contractual appointment and payment will be made only on last working day of the month and not on daily basis.

(b) The wage being provided under IYBGR subvention and will not be liable to be reviewed under IYBGR subvention and will be leave.

3. Leave

You will not be entitled to any type of leave being casual emp on daily wages. Your wages will be deducted at the rate of Rs 50.00 (Rupees sixty only) per day on account of total no of absence.

Alles ist
jein' Sonn' e'at'

4. Hours of work

You will be required to perform work for min 48 hrs in a week or as fixed by the appointing authority from time to time.

5. Conduct & Discipline

(a) Every emp shall normally work under the direction and supervision of employer or any pers authorised by him, on his behalf.

(b) The appt authority may terminate the services of the emp for any misconduct by giving one month notice in writing or pay in lieu without assigning any reasons.

(c) An emp may resign his post after giving one month notice in writing or pay in lieu thereof to the appointing authority.

6. Framing of Rules

The appointing authority will be empowered to add/amend/alter any civilian employees rules on service condition of civilian employees subject to exigencies of service.

*Resigned
for
adv. cali*

HQ CT Force (NR)
C/O 99 APO

Jan 02

1127/GS(SD)

HQ 57 Mtn Div GS (SD)
Stn HQ Dimapur

ANNEXURE-IV

EMP OF CIV PERS

1. Army HQ has ruled that no civ will be engaged as casual worker in any post
2. Please follow the instrs strictly.

2000

ND
(N Devnath)
Lt Col
GSOI (SD/WE)
for GOC

Internal

*Approved
N Devnath
2000*

2. 39

ANNEXURE - D

4

1.17

Mukhyalaya 41 Sub Area ORTAC
Headquarters 41 Sub Area
C/O 99 APO 100-51

Jan 2002

0341/11/P/GS(SD)

List A, B & C

EMP OF CIV PERS

1. Army HQ has ruled that no civ will be engaged as casual worker in any post.
2. Please follow the Instrs strictly.

(Auth : HQ Eastern Comd letter No 104081/51/GS(SD) dt 20 Dec 2001).

Franklin

(Paramjit Singh)
Ma)
Offg GSO 2 (Ops)
for Col GS

Internship

Est Branch

2008/01/02

Alles best
hier
Ses salut

TO BE FAXED

Headquarters Army, 41 Sub Area
17/05/99 ADP

U7

55

23 May, 2002

Stn. HQ, Dibrugarh
Stn. HQ, Jammu & Kashmir
Stn. HQ, Madhymanchal
Stn. HQ, Andhra
Stn. Det. 41 Sub Area - By Order

RCO

EMPLOYMENT OF CASUAL LABOUR

1. A copy of Army HQ (Addl) LWP file No. 68161/VM3(B) dt. 07 May 2002 is being herewith for compliance.

2. Confirmation on the subject may be fed to this HQ by 26 May 2002.

Sd/- (X) (X)
(Joginder Singh)
Lt Col
AQMB
for Col. O

Copy of Army HQ is percolated above.

AS ABOVE

1. It has come to the notice of this HQ that Stn HQ, Gurdaspur has recruited conservancy staff on daily basis out of the conservancy grant allotted under code head 560/01 despite a complete ban on recruitment of persons on daily wages for work of regular nature.

2. The instructions issued vide G1 Deptt of Per & Trg QM No. 49014/2/B6-Estt dated 07 Jun 1988 reproduced in Swamy's Manual on Estt & Administration provide :-

(a) Person on daily wages should not be recruited for work of regular nature.

(b) Recruitment on daily wages may be made only for work which is of casual or seasonal or intermittent nature or for work which is not for full time nature, for which regular post cannot be created.

(c) Employment of the same casual labour beyond 100 days in a year is not permitted.

(d) Work being done by casual workers is to be given to existing regular staff. In case regular staff being insufficient additional regular post to be created.

(e) Staffing norms be reviewed.

3. The work being performed by conservancy staff paid out of CGDA Code head 560/01 is of regular nature. Please ensure that casual workers are not recruited by units/fms out of the allotment made under CGDA Code head 560/01.

4. For HQ Western Command only :- The case for grant of ex-post facto sanction for appointment of 30 conservancy staff be processed with AG & Branch of this HQ.

5. Please acknowledge receipt.

Sd/- (X) (X)
(RB/Sohrawat)
Jt Dir/QM(B)

Attn: Col. O
Jt Dir
Q.M.

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PAYMENT OF ED PAY AND CIVILIAN PAYMENT FOR THE
MONTH OF AUG 2000

1. The following amount have been paid to the staff employed in the Spear CSD Canteen on account of ED pay an civilian for the month of Aug 2000 under the auth of SOP (Rev) para 15 and HQ 3 Corps 16047/R/AWWA/A3 dated 19 Jul 2000, Noting sheet No 31905/SC dated 02 Jun 2000 , 01 Jul 2000 and 07 Jul 2000 :-

S.No	Rank & Name	Amount	Signature
(a)	Sub DC Dhyani (Manager)	250.00	Dhyani
(b)	Nb Sub RS Jamwal (Liaison JCO)	250.00	Jamwal
(c)	HMT Raj Shekaran (Bulk NCO)	200.00	Raj Shekaran
(d)	Hav Satyanarayan (Accts Clk)	200.00	Satyanarayan
(e)	NK Sunil Kumar (MGR I/C)	200.00	Sunil Kumar
(f)	Hav Jayadevan (Liquor I/C)	200.00	Jayadevan
(g)	NK SK Das (Salesman)	150.00	SK Das
(h)	Cfn B Kanthachari (Salesman)	150.00	Kanthachari
(i)	Cfn B B Setty (Salesman)	150.00	B Setty
(j)	Sep Dingiya (Cashier)	200.00	Dingiya
(k)	Cfn B Ravi Kumar (Ledger Clk-I)	200.00	Ravi Kumar
(l)	Sep NC Debnath (Ledger Clk-II)	200.00	Debnath
(m)	Cfn Natesan (Billing Clk)	200.00	Natesan
(n)	NK IR Thapa (I/C Extn Counter Corps Camp)	150.00	IR Thapa
(o)	Smt Pratima Kumari (Billing Clk)	1500.00	Pratima Kumari
(p)	Mr Sama Mazumdar (Salesman)	1200.00	Sama Mazumdar
(q)	Mr Satyaram Das (Asst MGR)	1200.00	Satyaram Das
(r)	Mr Diganta Sharma (Asst Bulk I/C)	1200.00	Diganta Sharma
(s)	Mr Gopal Ballav Paul (Salesman)	1200.00	Gopal Ballav Paul
(t)	Miss Geeta (Billing Clk)	600.00	Geeta
	Total	9600.00	

*Plotted
J.W. Dossar*

Date : 01 Sep 2000

Noting/P-7

Pay
 Major/Sup
 OIC Spear Canteen
 OIC Spear Canteen

42
2002-100
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

58
File by
S.C. 19/2/02
S.C. 19/2/02

O.A. NO. 267 OF 2002

Shri Gopal Ballav Paul & Ors.

- vs -

Union of India & Ors.

- And -

IN THE MATTER OF ::

Written statement submitted by the
Respondents.

The Respondents beg to submit written statement as
follows :-

1. That with regard to para - 1, the respondents beg
to state that the contention of the petitioners is that
letter No- 51905/SC dated 10 Feb. 2002 specifying the new
terms and conditions of service of spear CSD Civilian
employees was issued with the deliberate and malafied
intention of depriving the applicants of the benefits
which was a planned move of the respondents to oust the
applicants from service, is denied. The new terms and condition
were framed with an aim to reemploy the petitioners as
casual labourers on contract basis who had denied to accept
the terms and conditions framed by Min. of Def pursuant to
the directions of the Hon'ble Apex court made in their in
their judgment in the case of UOI & Ors VS Aslam and Ors
Passed on 04 Jan 2001 in Civil Appeal No-1039-1040 of 1999.

Not Comal
Then we Sales
58

Copy of judgment dated 04-01-2001 is annexed as
as ANNEXURE - A.

2. That with regard to para - 2, the respondents beg to state that since the petitioners were engaged by URC as casual labour on contractual basis and since they had declined in their own free will to be governed by terms and conditions of service of URC employees issued by APQ letter no-96029/Q/DDCGS dated 24/09/2001 (Annexure - II in O.A.) they can't be treated as temporary/permanent employees of the canteen and as such they can't be treated as Govt servant. Therefore the Hon'ble tribunal has no jurisdiction over these petitioners.

3. That with regard to para - 3, the respondents beg to offer no comments.

4. That with regard to para - 4.1, the respondents beg to state that there is no dispute about the petitioners being citizen of India however they are not entitled to protection and privileges of a Govt servant as they were not employed against any permanent vacancy.

5. That with regard to para - 4.2, the respondents beg to state that no formal advertisement was given for employing any civilian as salesman however, it is quite obvious that ~~in~~ their employment was secured as there was a need of some salesman temporarily for a short duration.

-3-

6. That with regard to para-4.3, the respondents beg to state that although it is admitted that the petitioners were selected for employment against temporary vacancies and were appointed with effect from 04 Dec 2000.

THC DO
However, prior to that they were working as casual labourers with ~~apparx~~ spear CSD.

7. That with regard to para - 4.4, 4.5 & 4.6, the respondents beg to offer no comments.

8. That with regard to para - 4.7, the respondents beg to state that the contention that depending on their performance the services of the petitioners were extended by another subsequent agreement signed on 01 Mar 2002 is denied. The petitioners have in actually hidden circumstances and the facts leading to their reappointment and have tried to mislead the Hon'ble tribunal. It is submitted that pursuant to the judgment dated 04 Jan 2001 of the Hon'ble Supreme Court in the case of UOI & Ors Vs Mr. Aslam & Ors and in accordance with the directions of the Hon'ble Supreme Court to determine the service conditions of the

employment in Unit - Run - Canteen (URC) on an early date the Army Regs with due approval of Min of Def formulated terms and conditions of services of URC employees. According to these service conditions the employees already in

service against permanent vacancies of URC were to be absorbed in the URC as per probation/temporary or permanent employee depending upon the number of years had put in provided they accepted the terms and conditions laid down vide this letter No 96029/W/DDCGS dated 14 Sept 2001 issued from Army HQ. Although the ~~this~~ letter petitioners did not fulfil the QR for their employment on permanent

basis as neither they were permanent nor they were employed

No Satisfactory
against permanent vacancy still the management supplied the terms and conditions framed by AHQ to the petitioners and they were given option to either accept these conditions of service or to choose to be employed as casual labours.

Whereas
Since the terms and conditions laid down by Army HQ included transfer within the command and going along with the unit to other location, the petitioners did not opt to be bound by these terms and conditions which were ~~uniformly~~ uniformly applicable to all URC employees in India as directed by Hon'ble Supreme Court. The Petitioners have signed the agreement for being employed as casual labours on contractual basis for six months. That is how the petitioners were given fresh appointment as sales man w.e.f. 01 Mar 2002.

9. That with regard to para - 4.8, the respondents beg to state that the contention that the terms and conditions laid down under letter No- 51905/SC dated 10 Feb 2002 annexed with the O.A. as annexure - III was arbitrary action of

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the respondents and it smacked malafied intentions is denied in absolute terms. As stated earlier, the petitioners were given copy of Army HQ letter No.96029/Q/DDCGS dated 14 Sept 2001 as ~~xxxxxxxxxx~~. They were also ~~told~~ annexed with O.A. as annexure - II and they were also handed over the fresh terms and conditions. They were also told verbally that they were not bound to accept the terms and conditions ~~vide~~ letter No-51905/ SC dtd. 10Feb 2002. Should they decide to be absorbed in the spear CSD on permanent basis they had to give their willingness to be bound by the terms and conditions laid down ~~vide~~ Army HQ letter No-96029/Q/DDCGS dated 14 Sept 2001. The petitioners had neither the compulsion not to accept the terms and conditions for permanent appointment nor they had any compulsion to accept terms and conditions formulated for their emplacement as casual employee. The petitioners accept the terms and conditions laid down ~~vide~~ letter No-51905/ SC dated 10 Feb 2002 and declined the accept the terms and conditions for permanent appointment.

The they fact that they were supplied with the Army HQ letter No-96029/Q/DDCGS dated 14 sept 2001 which itself shows that nothing was hidden ~~xx~~ from them. Therefore, the entire co-intention made under para - 4.8 is ~~malafied~~ malicious and is an afterthought and purely an attempt to malign the transparent, honest and most humane dealing of the respondents with the petitioners.

10. That with regard to para 4.9, the respondents beg to state that the contention of petitioners under this para is presumptive, malicious and devoid of any substance.

[The exercise undertaken to reappoint these petitioners was purely consequent to directions of the Hon'ble Supreme Court. It was also desirable that the newly formulated uniform terms and conditions applicable to all URC employees be made known to petitioners so that they don't have any surprise in future specially with respect to conditions relating to their transfer and termination of services on the closure or moving out of the canteen. It appears that petitioners want to have the cake and eat it too. While they did not want transfer to other location but they will to enjoy the facility of permanent employment which by no such of imagination can be held reasonable.

11. That with regard to para - 4.10 , the respondents beg to state that there is no substance in the contentions under this para as the alleged orders annexed in O.A. as annexure IV and V have no bearing in relation to engagement of casual labours in pure Govt. department whereas URC are not purely Govt. agency. Although the Hon'ble Supreme

- 7 -

Court have ruled that employees serving in URC to have the status of Govt servant however that by itself ipsa facta would not entitle them all the service benefits as is available to regular Govt. servants or even their counter parts serving in ~~KES~~ CSD(I) Canteens. Thus drawing any analogy from these letters will not be proper. Further petitioners have themselves opted to be employed as casual workers. It is a matter of ~~concern~~ that petitioners had illegally and in an unauthorised manner took out letters from official records which shows that they can go to any extent to fulfill their ~~their~~ desires. By this act they have proved themselves as security hazard and ~~be~~fit to be retained in a agency located in proximity of Army units.

*Take note
Casual workers
How to prove
UCA*

12. That with regard to para 4.11, the Respondents beg to state that as per the terms and conditions of the engagement the employers have the right to terminate the services of petitioners as and when there is no need of such employees or their conduct is not satisfactory.

13. That with regard to para - 4.12, the respondents beg to state that the contention that the petitioners were appointed against temporary vacancy of salesmen and that they have been rendering service as such for two years and therefore have acquired a valuable right for regularization

in post of salesmen is strongly refuted. The temporary vacancy itself shows that there was need of salesman on temporary basis for short duration. The terms of engagement clearly show that their engagement was initially for one year only and it could have been extended for further one year provided there was a need of salesman. It ~~xxx~~ further said that as and when the spear CDS Canteen did not require salesmen their services could be terminated by giving one month notice. Thus to say that by merely having served for some time one gets right to get regularized in a small agency which is functioning basically for welfare purpose and which ought to see that there is enough sources to enable it to provide salary for its workers and there is enough work. These facts were to be reviewed periodically. The contention that the petitioners have been serving in temporary vacancy for two years is also not borne out of ~~xxx~~ records. The Annexures VI attached to O.A. by no means shows that they were employed on temporary. It merely shows that during the month of Aug, 2000 they had worked for the canteen. The payment made to these petitioners also shows that they were paid @ Rs 50/- & Rs. 40/- per day.

E The spear CSD is basically meant to cater for needs of troops of HQ 3 Corps. with HQ 3 Corps and its units

moving on OP Prakaram wef Dec 2001 there is drastic decrease in sales of the Canteen. There is a requirement of CSD Canteen with the HQ 3 Corps and spear CSD is likely to be closed and moved from here. A comparative statement showing the turn over of canteen upto Dec 2001 and thereafter till date is annexed as R-1. The contention that as per Army HQ letter No-96029/Q/DDCGS dated 14 Sept 2001 on completion of one year service the worker shall be treated as temporary employee is not disputed but for that, the worker should have been employed against permanent vacancy. Since the petitioners were in any case employed on temporary basis against temporary vacancy there is no question of regularising them. Further on 10 Feb 2002 option for agreeing with terms and conditions laid down in Army HQ letter No-96029/Q/DDCGS dated 14 Sept 2001 was given to them but they declined to accept them. As such, it does not lie on their mouth to say that they have not been regularized.

14. That with regard to para 5.13, the respondents beg to state that since the petitioners were employed upto 28 Feb 2002 against temporary vacancy on temporary basis There after they were engaged as casual workers and since they had declined to abide by ~~the~~ terms and conditions

laid down by Army HQ letter No-96029/Q/DDCGS dated 14 Sep 2001, the petitioners have no claim for permanency in the Spear CSD canteen. They have no cause of action and this Hon'ble Tribunal be not pleased to pass any order which is detrimental to the proper functioning of spear CSD which is merely a welfare measure and not a profit earning organization.

15. That with regard to para - 4.14, the respondents beg to state that the application is not bonafide. The petitioners have adopted illegal means to have access to official documents without due authority. They have rendered themselves, by this act a security hazard and the tribunal is requested to dismiss this petition in limine.

16. That with regard to para - 5, the respondents beg to state that there is no ground for any relief to be given to the petitioners. The grounds mentioned under para- 5 have no substance as the same are misrepresentation of terms of engagement and the purpose for which petitioners were employed. The grounds raised under para - 5 are assailed on the following counts.

17. That with regard to para - 5.1, the respondents beg to state that since the petitioners were appointed against temp. vacancy an not on probation against a permanent vacancy, they have no right to get even ^{when} there is no permanent vacancy in speare CSD. Hence this ground is baseless.

18. That with regard to para - 5.2, the respondents beg to state that there was no formal advertisement for the post. Since earlier the petitioners were already working on daily wages the CSD management out of humane considerations appointed them against temporary vacancy for a period of one year.

19. That with regard to para - 5.3, the ~~Ex~~ Respondents beg to state that the petitioners have not rendered service on temporary employment against permanent vacancy. They were working sometimes as casual labours and for some time employed against temporary vacancy on humanitarian grounds. As such, they have no right for regularization.

20. That with regard to para - 5.4 & 5.5, the respondents beg to state that although the Hon'ble Supreme Court have upheld the issue that CSD canteen civilian employees to be treated as Govt servant for the purpose of pay and allowance

-12-

the Hon'ble apex court is very emphatic in ~~its~~ its ruling that despite having treated such civilian employees as Govt servant they will not be treated Govt employees at par with other Govt. departments and they will also not have any retrial benefits. The Hon'ble Supreme Court also directed the UOI to formulate uniform terms and conditions for employment of such civilians without specifying greater details as to by whom and how the employment of such civilians will be made and left these details to be decided by Govt. of India. The Hon'ble Supreme Court have also declined to apply fundamental Rules on such civilian CSD employees as applicable for other Govt. servants. Therefore, petitioners have got no right to be considered for regularization merely on the basis of their employment against temporary vacancy. The Hon'ble supreme court judgment is applicable and ~~xxx~~ implementable only against employees appointed against a permanent vacancy.

-13-

21. That with regard to para - 5.6 of O.A., the respondents beg to state that the service conditions of URC as notified by AHQ letter No-96029/Q/DDCGS dated 14 Sep 2001 is not applicable on petitioners as firstly, they were never employed against permanent vacancy and secondly they themselves declined to be governed by terms and conditions as laid down in this letter .

22. That with regard to para - ~~the~~ 5.7, the respondents beg to state that the petitioners never approached canteen authorities as they well knew that they had no such legal right for regularization.

23. That with regard to para - 5.8, the respondents beg to state that the contention of petitioners that annual turnover at the canteen is over 4 crores is incorrect. With the move of HQ 3 Corps to an operational location there is drastic fall in turn over of the canteen.

24. That with regard to para - 5.9, the respondents beg to state that the petitioners were never employed against permanent vacancy as they claim considering the

the declining turn over they were offered job as casual labours purely on contractual basis wef 01Mar 2002 and as such there is no injustice caused to them nor there was any malafide intentions on the part of the canteen management in reemploying them as casual labours on contractual basis. No analogy should be drawn from Annexure IV of the petition as they were meant for pure Govt departments maintained from consolidated fund of India.

25. That with regard to para 5.10, the respondents beg to state that the change of status of the employees was with their own concurrence and agreement and consequent to their denial to abide by terms and conditions laid down by AHQ letter No- 96029/Q/DDCGS dated 14 Sept 2001.

26. That with regard to para - 6 & 7, the respondents beg to offer no comments.

27. That with regard to para - 8 , the respondents beg to state that the petitioner have no cause of action and there is no ground for regularizing them as

- 15 -

permanent employee of Spear CSD. Further, the petitioners on their own declined to abide by terms and conditions laid down AHQ letter No- 96029/Q/DDCGS dated 14 Sept 2001. The continuation of petitioners in present appointment is subject to their satisfactory conduct and viable economic condition of the cantonment. The petition is ill motivated and amounts to unnecessary harassment to Spear CSD management which is already under pressure due to continuous drop in turn over.

The temporary stay vide order No- 367/02 dated 23 Aug 2002 may kindly be vacated.

V E R I F I C A T I O N

- 16 -

I, Shri Major Y Sangwan presently working as Secretary Spear CSO be duly authorised and competent to sign this verification, do hereby solemnly affirm and declare that the statements made in para - 2, 4, ~~5~~ to 7, 9 and 12 to 28 are true to my knowledge and those made in para 1 and 10 are true to my information derived therefrom and rest are my humble submission, I have not suppressed any material facts.

And I sign this verification on the 19th the day of Sep 2002.


Declarant.

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1039-1040 OF 1999

IN THE MATTERS OF:

Union of India and Ors.

Appellants

Vs.

M. Aslam and Ors.

Respondents

With

Civil Appeal Nos. 1041/1999 and 1042-1043/1999

Union of India is the appellant in all these appeals and these appeals are directed against the orders of different Central Administrative Tribunals. The respondents are the employees of the Unit-Run-Canteens which provide canteen facilities to the troops at the unit level. Applications before the Central Administrative Tribunals were filed by these employees claiming benefits as regular defence personnel. It is argued that at least as civilian employees serving under the Ministry of Defence on the allegation that the Unit-Run-Canteens are part of the Canteen Stores Department and since the Canteen Stores Department forms a part of the Government in the Ministry of Defence there is no reason as to why the Unit-Run-Canteens should not be held to be a part of the Ministry of Defence. On behalf of Union of India the jurisdiction of the Tribunal was assailed on the ground that

(2)

rejects and consequently the Tribunal did not have the jurisdiction to entertain the applications and decide the grievances of the employees. According to the Union of India the Unit-Run-Canteens are operated by the non-public funds and the expenditure required to run the Unit Canteens is made out of the profits earned by the canteens itself and, therefore, so far as the personnel serving in such canteens, there is no relationship of master and servant between the Government of India and the employees, and consequently the applications before the Tribunal should be rejected. The Central Administrative Tribunals, however, at Jodhpur and Jalandhar hold the view that the Unit-Run-Canteens are the part of Defence establishment and consequently the holder of post in the management of such canteen must be held to be connected with the Defence Services. The Tribunals examined the relevant provisions made by different personnel providing all pervasive control with the Ministry of Defence.

and thus held that there subsist master and servant

relationship between the employees serving in Unit-Run-

Canteens and the Ministry of Defence and, therefore, the

Tribunal retains the jurisdiction to entertain applications and

decide those applications in accordance with law. Mr.

Goswami, learned senior counsel appearing for the Union of

India vehemently contended before us, that these Unit-Run-

Canteens are different from the Canteen Stores Department

and the salary of the employees serving in the Unit-Run-

Canteens are not paid out of the Consolidated Fund of India

but a fund created at the unit level and profit out of sales in

Unit and Canteens are utilised for the payment of salary as

well as for creating assets of the canteens, and consequently

it is not possible to hold that there exist relationship of master

and servant between the employees serving in these canteens

and the Union of India in the Ministry of Defence.

According to Mr. Goswami, no doubt, some amount of

control is vested with the local defence personnel, but

Army, Air Force or Navy, over the employees serving in Unit-Run-Canteens, but conferment of such disciplinary control alone will not clothe the employees with the status of Government servant or servants under the Ministry of Defence and the Tribunal, therefore, committed serious error in declaring the status of these employees as Government servants. Mr. Goswami also strongly relied upon the judgment of this Court in the case of Union of India and Another vs. Chotelal and others (1999) 1 Supreme Court Cases 554, in which case this Court has held that the Dhobis in the National Defence Academy, Khadakwasla are not Government servants, particularly because their salary is not paid out of the Consolidated Fund of India. According to Mr. Goswami, the Administrative Tribunals at Allahabad and Panjab and Haryana High Court at Chandigarh have taken contrary view so far as the status of these Unit-Run-Canteens' employees are concerned, and according to the learned counsel that constitutes a correct view.

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Mr. Mohita, Mr. P.N. Mishra, senior advocates and several other learned counsel appearing for the respondents, on the other hand contended, that the Central Administrative Tribunals at Jodhpur and Bombay have taken the correct view with regard to the status of such employees. According to them the decision of this Court and the test indicated in the Life Insurance Corporation case would fully apply to the facts and circumstances of the present case and, as such, there will be no reason to hold that the employees in the Unit-Run-Canteens are not the Government servants.

In order to decide whether the employees serving in the Unit-Run-Canteens can be held to be Government servants, it is necessary to find out the mode of appointment of such employees, Rules and Regulations governing the conditions of service of such employees, fund from which such salary is paid, and other factors which really determine

the existence of relationship of master and servant between the Government and the employees. In the Defence Services there are two types of canteens, (1) Canteen Stores Department, and (2) Unit-Run-Canteens. The Canteen Stores Department was in existence in this country even during pre-independence days and it has its Head Office and Base Depot in Bombay with 33 Area Depots all over the country. These Area Depots are the wholesale outlets, which serve Unit-Run Canteens in their respective zones. The Canteen Stores Department after the independence from 1948 onwards function as a Department under the Ministry of Defence initially for 3 years on an experimental basis and later from 1950 has been working on permanent basis. We are concerned in the present case with the Unit-Run Canteens and the status of the employees serving therein. As has been stated earlier, these Unit-Run Canteens under their respective Commanding Officers in the three services - Army, Navy and Air Force get their articles from the wholesale outlets in

area Depot of the Canteen Stores Department and at present there exist 3400 Unit-Run Canteens. Prior to the World War II the retail trade in the Defence Services was in the hands of the contractors. During World War II a regular cadre called Indian Canteen Code came to be formed under the Canteen Services (India) to handle retail trade in operational areas where contractors were not expected to go. After 1947, the organisation split into two : Canteen Stores Department (India) and Canteen Stores Department (Pakistan). The retail trade, however, was reverted to the contractors. But by the early fifties it was realised that the margin of profit between the wholesale price and the retail rate could be a welcome source of funds available to commanding officers for welfare purposes. Thus, the concept of unit-run canteens was born, and contractors were driven out. When Major Gen. K.S. Thimaya took over as Quarter Master General, he gave detailed thought to providing canteen facilities to the troops at the unit level. He found that retail outlets being in the

hands of the unit canteen contractors, the margin between the wholesale price and retail price of goods went to the contractors whereas the amount in the hands of individual commanding officers of units in the Army, Navy and Air Force could be utilised for the welfare of the troops. The case was, therefore, made out jointly for taking over of contractor-run canteens by units or formations, as the case may be, so that the profits from the sale of canteen stores could be retained within the unit. Contractors, no doubt, put up considerable objection to the aforesaid proposal but the Government agreed to the proposal of General Thimaya and orders were issued. The concept of Unit-Run Canteens, therefore, became an accepted doctrine though it took considerable period for implementing change over. It goes without saying that from 1948 onwards the Canteen (for short 'CSO') functioned as a department under the Ministry of Defence, initially for three years on an experimental basis, and later from 1950 on a permanent basis and yet right upto

1977 the legal status of the same remained nebulous. For functional purposes, it was a commercial undertaking, but for actual practice it was treated as a Department of the Ministry

of Defence. The result was that the terms and conditions of

employees presented various problems which quite often became a source of discontent and unpleasant employer-employee relations. As has been stated earlier, for effective

functioning of the defence services it is absolutely necessary to provide canteen facilities through out the country and

while the Canteen Stores Department serve as whole sale outlet it is the Unit-Run Canteens which serve as retail outlet.

A set of Rules regulating the terms and conditions of service of the employees of Unit-Run canteens have been framed which confers all pervasive control over the employees with

the authorities of Defence services. Though the funding of the Unit-Run Canteens is not made out of the Consolidated Fund of India but it is made by the Canteen Stores Department and this Department in its turn has formed a part

the Ministry of Defence, admittedly. In Parimal

Sandra Raha and others vs. Life Insurance Corporation

India and others - 1995 Supp. (2) Supreme Court Cases

11, the employees of different canteens in different offices of the Life Insurance Corporation whether were employees of

the Corporation itself was under consideration by this Court.

This Court evolved four principles which are quoted
hereunder:

"(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees became a part of the establishment and the workers employed in such canteens are employees of the management.

(ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a

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canteen, the canteen does not become part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the employees who avail of the service, the length of time for which

the service has been continuously available; the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government servants; when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr. Goswami, the learned senior counsel appearing for the Union of India strongly

relied upon the judgment of this Court in Union of India and another v. Chotelal & Others (1999) 1 Supreme Court

Cases 554, wherein the question for consideration was whether Dhobis appointed to wash the clothes of cadets at NDA at Khadakwasla who are being paid from the regimental fund could be treated as holders of civil post within the Ministry of Defence. This Court answered in the negative because the regimental fund was held not to be a public fund as defined in paragraph 802 of Defence Services Regulation. Payment for such dhobis out of the regimental fund and the character of that regimental fund was the determinative factor. But in the case in hand if the Canteen

Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit-Run Canteens then the employees who discharge the duties of salesmen in such retail outlets must be

to be employees under the Government. The officers of Defence Services have all pervasive control over the Unit-Run Canteens as well as the employees serving therein.

(3) A regular set of Rules have been framed determining the service conditions of the employees in Unit-Run Canteens.

(4) The funding of articles are provided by Canteen Stores Department which itself is a part of the Ministry of Defence.

The report of a Committee of Subordinate Legislation went

into detail the working conditions of the employees engaged in the Unit-Run Canteens and categorically came to the

conclusion that these employees are recruited, controlled and supervised by the Rules and Regulations made by the

Defence Services although these have been given the name of

Executive Instructions. The said Committee came to the

conclusion that for all intent and purposes the employees in

the Unit-Run Canteens are Government employees and

should be treated as such. (In the aforesaid premises we are

of the considered opinion that the status of the employees in

~~The Unit-Run Canteens 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 Tribunal Act.~~ Civil Appeal Nos. 1039-1040 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Branch, in O.A. No. 86 of 1995 accordingly stand dismissed.

Civil Appeal No. 1041 of 1999 is Union's appeal against the decision of Central Administrative Tribunal, Jodhpur Branch in O.A. No. 157 of 1993 and OA No. 333 of 1994. By the impugned orders the Tribunal came to hold that it had the jurisdiction to entertain the applications filed by the employees of the Unit-Run Canteens and further directed that those employees are entitled to pay and other benefits similar to the pay and other benefits available to the canteen employees in the CSDI. The Tribunal also further directed

that the applicants should get the minimum of the salary presently being paid to their counter-parts in the CSDI and all the benefits of the other service conditions available to the regular Government employees in the CSDI. It also further directed that they should be treated as Government employees from the date of the filing of the applications before the Tribunal. It also directed that they would be entitled to retiral benefits. As already stated, we have come to the conclusion about the status of the employees serving in Unit-Run Canteens to be that of Government servants, but that by itself ipso facto would not entitle them to get all the service benefits as is available to the regular government servant or even their counter parts serving in the CSD Canteens. It would necessarily depend upon the nature of ~~and~~ discharged by them as well as on the Rules and Regulations and Administrative Instructions issued by the employer. We have come across a set of Administrative Instructions issued by the Competent Authority governing the

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service conditions of the employees of such Unit-Run
Canteens. In this view of the matter, the direction of the
Tribunal that the employees of the Unit-Run Canteens should
be given all the benefits including the retiral benefits of
regular government servants cannot be sustained and we
accordingly, set aside that part of the direction. ~~we~~

However, hold ~~that~~ that these employees of the Unit-Run
Canteens will draw at the minimum of the regular scale of
Pay available to their counterparts in the CSDP and we
further direct the Ministry of Defence, Union of India to
determine the service conditions of the employees in the
Unit-Run Canteens at an early date, preferably within six
months from the date of this judgment. This appeal is
accordingly disposed of with the aforesaid direction and
observation.

Civil Appeal Nos. 1042-43 of 1999. These appeals by
the Union of India are directed against the order of the

Central Administrative Tribunal, Jodhpur Bench in CA No. 231 of 1994, whereunder the Tribunal has directed the Union Government to review the payment of subsistence allowance payable to the employees in the light of the E.F.R. 53 of the Fundamental Rules. Notwithstanding the fact that we have recorded the conclusion that the employees serving under the Unit-Run Canteens could be treated as Government servants, but that does not necessarily mean that the service conditions of such employees are governed by the Fundamental Rules. It would be open for the employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules. There is no decision of the employer that Fundamental Rules would be applicable to such employees and in the absence of such decision the Tribunal was not justified to direct that the question of payment of subsistence allowance should be reviewed in accordance with the provisions contained in the Fundamental Rules. In this view of the matter, though we uphold the jurisdiction of the

Tribunal to entertain applications filed by employees serving in Unit-Run Canteens but the impugned direction for reviewing the payment of subsistence allowance in terms of Fundamental Rules cannot be sustained and that part of the direction accordingly stands set aside and Union's appeal to that extent stands allowed.

These appeals are disposed of with aforesaid directions and observations.

...../..... J.
(G.B. PATTANAIK)

...../..... J.
(B.N. AGRAWAL)

New Delhi
January 4, 2001.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN THE MATTER OF :

OA No. 267 of 2002

Sri G.B.Paul & Ors.

-Vs-

Union of India

-And-

IN THE MATTER OF :

An affidavit filed by the
Union of India stating the present
status of the Spear CSD canteen at
Rangapahar, Dimapur.

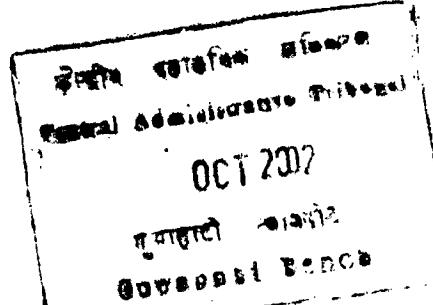
A F F I D A V I T

I, Shri Major Y.Sangwan, son of Shri N.P. Sangwan, aged about 33 years, temporarily resident at Rangapahar, in the District of Dimapur, do hereby solemnly declare and affirm as follows :-

1. That I am the Secretary, Spear CSD canteen Rangapahar at Dimapur, and as such I am well aware and conversant with the facts and circumstances of the case.

Since When ?

Contd...2



Filed by
Union of India
v/s Respondent
Through Advocate
Koenigslins Lucco Solo
Advocate

11-10-02

I have been duly authorised and competent to swear this affidavit on behalf of the Respondents.

2. That the Spear CSD Canteen at Rangapahar was the principle unit run Canteen supporting the entire troops stationed at Rangapahar alongwith Headquarters 3 corps.

3. That apart from this there were other units/formation headquarters under Headquarters 3 Corps, which were also drawing items from this Canteen before January, 2002. Since most of the troops have gone on Western Borders and merely a skeleton of Headquarters 3 Corps unit are present and the remaining HQ may also be required to move on short notice to West frontier in view of prevailing situation, which was dependent on this Canteen. There may not be any requirement to run this Canteen with so many employees.

4. That it is further declared that at the time of reappointing the petitioners on adhoc basis for a period of 6 months we were not sure of the status of Headquarters 3 corps and we had thought that in case Corps ~~3~~ HQ comes back alongwith its units before August 2002 the above persons might be asked to rejoin the work. However, since the Headquarters 3 Corps has not returned till date and there is no possibility of their coming back soon and also since the remaining part of 3 Corps may be required to join them, the running of this

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unit run CSD Canteen with so many employees, who ~~do~~ do not have sufficient work, has become unaffordable. But for the stay order of the Hon'ble Tribunal this CSD Canteen would have been closed in the month of August 2002 or it would have taken the services of own jawans to run the same, as it is not possible for this canteen to provide remuneration for so many civilian employees.

5. That the statements made in paragraphs 1 to 4 are true to my knowledge.

And I hereunto set my hand on this affidavit on this the 10th day of October, 2002 at Guwahati.

Identified by

Keneingulio Lucas Solon

Advocate

DEPONENT

Solemnly declared and affirm by the deponent before me who has been identified by K. L. Solon Advocate, on this 10th day of October, 2002 at Guwahati.



W.D. 10/10/2002
MAGISTRATE

Common Seal
Guwahati

23rd Oct 2002

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of :

O.A. No. 267 of 2002

M.P. No 1287202

Shri Gopal Ballav Paul & Ors.

--vs--

Union of India & Ors.

--And--

In the matter of

Rejoinder submitted by the
applicant in reply to the written
statement submitted by the
Respondents.

The applicants above named most humbly and respectfully
begs to state as under :

1. That they have gone through the written statements and
has understood the contents thereof.
2. That the applicants categorically deny the statements
made in paragraphs 1,2,4,5 and 6 of the written
statement and beg to state that the applicants at no
point of time denied to accept the terms and conditions
of service of the regular Unit Run Canteen employees
framed by the respondent department and this is a
misrepresentation of facts. Further the applicants
were formally appointed following advertisement and

Filed by the applicant
through Sri G. N. Chakravarty
Advocate on 22-10-2002
LW

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selection with fixed pay, though temporary and that too against temporary vacancies and as such they are very much a part of Unit Run CSD Canteen enjoying a status of Government servant and are fully under the jurisdiction of this Hon'ble Tribunal. Accordingly they are entitled to all the rights, protections and privileges of a Government Servant as guaranteed under the Constitution.

3. That the applicants emphatically deny the statements made in paragraph 8 of the written statement and submits that question of denial of or option for the service conditions framed by the respondents for the Unit Run Canteen following the Apex Court's order as stated, is out of question since no such scope or option was given to the applicants whatsoever and the respondents extended the service of the applicants with new terms and conditions as stated in the O.A. with effect from 01.03.2002 exclusively for the applicants thus depriving them of being considered for their absorption against permanent vacancies for which they had already attained eligibility by virtue of the services rendered by them against temporary vacancies of salesman in spear CSD Canteen with effect from July/August 2000. The applicants signed the new agreement finding no other alternative and with the apprehension of losing their job as temporary salesman. The very statement of the respondents that they had

Gopal Ballav Patel

supplied the terms and conditions laid down in letter dated 14.9.2001 and also given option to the applicants for acceptance of the terms and conditions laid down in letter dated 14.9.2001 is categorically denied and the respondents are put to strictest proof by producing the relevant documents/records if any before the Hon'ble Tribunal to establish the correctness of the aforesaid statement. The applicants taking all the pains for regularization of their services in the light of the letter dated 14.9.2001 and on receipt of the said letter from the Army Headquarter the local authority unilaterally converted the terms and conditions of the service treating the applicants as casual workers for Spear CSD Canteen in order to avoid implementation of the policy laid down in letter dated 14.9.2001 for the purpose of regularization of services of the applicants. As such, the statement made in paragraph 8 of the written statement is a deliberate false statement to mislead this Hon'ble Tribunal.

4. That in reply to the statements made in paragraphs 9 and 10 of the written statement, the applicants beg to say that the contentions made by the respondents therein are categorically denied and further beg to submit that the applicants were neither given the copy of the letter dated 14.9.2001 nor given the option in respect to letter dated 10.2.02 as stated but the fresh terms and conditions specified in the letter dated

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10.2.2002 were imposed arbitrarily reducing the status of the applicants from temporary employees to casual workers and the entire exercise was done deliberately in order to pave way for ousting the applicants from their existing employment as temporary Salesman. The statements given by the Respondents regarding non-acceptance of the terms and conditions applicable in case of regular employees of the Unit Run Canteen by the applicants on the ground of possibility of transfer etc. are all concocted and imaginary stories made by the Respondents and as such misleading.

It is categorically submitted that the applicants are ready to accept the terms and conditions in Toto laid down in the letter dated 14.9.2001, if the same is offered to them as and when and they also undertake to serve in any part of Indian Territory or abroad.

5. That the applicants categorically deny the statements made in paragraphs 11 and 12 of the written statement and further beg to state that the impugned letter dated 10.02.02 engaging the applicants as casual employees is violative of the order dated 22.01.2002 and dated 25.01.2002 (Annexure-IV and V to the O.A.) of the Army Headquarters and both the orders are quite relevant in this context.

Further, the said letters are not confidential letters and are available for information and as such

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there is nothing wrong in getting the same by the applicants since transparency in Government administration is an essential and requisite parameter of administration. In this connection it may be stated that the documents annexed in the Original application is not a confidential one and therefore production of the photocopy of the same before the Hon'ble Tribunal in order to support the contention of the applicants cannot be termed as security hazard as alleged in the written statement. It is ought to be mentioned here that those letters/documents were obtained by the applicants long back but surprisingly when those documents were annexed with the Original Application and as soon as after receipt of the notices of the O.A. 267/2002 the respondents started inhuman physical and mental torture upon the applicants and the applicants were very often forced to grass cutting work in the field as a measure of punishment for approaching the Hon'ble Tribunal as well as for annexing of the relevant documents to the Original Application in support of their contentions. The applicants also being threatened of dire consequences for approaching the Hon'ble Tribunal. The applicants are ready to submit a detail affidavit if necessary disclosing the name of the officers who have misbehaved with them and entrusted the work of grass cutting in the field in addition to their normal work in the Spear CSD Canteen. As such, this sorts of harassment in both

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ways physically and mentally by the respondents is uncalled for in a civilized society that too in a democratic country like India. As such, the Hon'ble Court be pleased to direct the higher authorities of the Army Headquarter to look into the matter as stated above and protect the right and interest of the applicants and to save them from harassment of physical and mental torture.

6. That the applicants specifically deny the statements made in paragraphs 12 and 13 of the written statement and beg to say that the applicants were appointed as Salesman against temporary vacancies with a definite pay scale and that too after being formally selected for the posts which is evident from their appointment letters annexed with the OA (Annexure-I series). As such they have acquired a valuable right for regularization and the respondents cannot terminate their services arbitrarily as contended, on the ground that they were temporary employees which is inconsistent with the settled laws and more so when the conduct of the applicants are satisfactory. In this connection it may be stated that the respondents also made an attempt to oust the applicants from service on the alleged ground of unsatisfactory conduct as because they have annexed certain relevant documents before the court of law. This is an age of transparency and as such annexing the relevant documents which are not

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confidential in nature cannot be made a ground for ousting the applicants from service which is raised in the written statement for the first time by the respondents after receipt of notice of the Hon'ble Tribunal in O.A. No. 267/2002. As such, the allegation of unsatisfactory conduct of the applicants is contrary to records.

It is further submitted that the contentions of the respondents that the strength of 3 Corps is drastically decreased in Sales of the Canteen and there is a likelihood of closing down the Spear CSD Canteen as and when the Headquarter 3 Corps moves from the present location are categorically denied. In each and every month the sales of the spear CSD canteen stands to Rs. 30 to 35 lakhs. It is relevant to mention here that even during the last two months i.e. August and September, 2002 the sale of the spear CSD Canteen stood about Rs 30 lakhs per months. Moreover, a large number of troops of different units such as EME Unit, Zonal Workshop, Dog Unit, MH 165 Unit, Station Headquarter, 14 Veterinary Hospital, GE 868, 137 Works Engineer, BCSR, Transit camp, 3 COSR, 3 CESR, 86 FWR, Field Ambulance, 417 Independent Regiment, 12 AIR, 11 TAC, Core Camp, 381 Supply Depot, 5003 ASC Battalion, 6 Bihar Regiment, 7003 EME, 50 Company etc. are the consumers of the said Spear CSD canteen. It is also relevant to mention here that Maha Regiment as well as

Gopal Ballav Paul

Assam Regiment very recently came down to this part of the Region and the troops of the aforesaid units joined as consumers of the spear CSD Canteen. There are altogether troops of 34 units enjoying the benefit of the Spear Canteen Service at Ranga Pahar, Dimapur. The applicants further beg to state that they came to learn that the other troops of Headquarter 3 Corps who were deployed in the border areas in the month of August, 2000 also likely to be returned very shortly within the jurisdiction of this spear CSD canteen. Therefore the applicants also urge before the Hon'ble to direct the Union of India to set up an enquiry commission regarding the correctness of the statement of the respondents as regards to the likelihood of closure of spear CSD canteen. It is emphatically stated that there is not even a remotest possibility of closing down of the spear CSD canteen, Dimapur. It is stated the said spear CSD canteen was established say about 25 years back and there is no chance or possibility of abolition of the same.

7. That in reply to the statements made in para 14 and 15 of the written statement, the applicants beg to say that at no point of time they declined to abide by the terms and conditions laid down under the letter dated 14.9.2001 and denial of the same benefit to the applicants by the Respondents led to the cause of action of this O.A. and more so, because of unilateral

Lopab Ballav Paul

change of terms and conditions of service of the applicants by way of converting them as casual labour from temporary employees with the intention to deny the benefit of regularization in service in the light of the letter dated 14.9.2001. The very statement of the respondents that they have offered the benefit of the scheme of regularization contained in the letter dated 14.9.2001 to the applicants, itself made it clear that the present respondents also declared the applicants eligible for grant of the benefit of regularization in terms of the letter dated 14.9.2001 issued by the Army Headquarter in the light of the Hon'ble Apex Court judgment. The allegation of security hazard for unauthorized occupation of documents as stated in para 15 has already been explained in the preceding paragraph of this rejoinder, hence no further reply is necessary.

5. That the applicants categorically deny the statements made in paragraphs 16, 7, 18, 19, 20, 21, 22, 12, 24, and 25 of the written statement and beg to submit that all the grounds shown by the applicants for relief are genuine, legal and full of merit and the application deserves to be allowed with cost.

Further the applicants were recruited against advertisement as temporary salesman in spear CSD canteen and have worked for two years and as such they are entitled for regularization as per directives of

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the Hon'ble Supreme Court according to which they are a part of the Spear CSD Canteen and the rules framed by the respondents for the regular URC employees are also applicable in the instant case.

9. That the applicants categorically deny the statements made in paragraph 27 of the written statement and state that the applicants have strong cause of action against which this O.A. has been filed and they have legitimate claims for regularization of their services since they have been discharging the duties like all other regular employees of the URCs and have been performing.
10. That under the facts and circumstances stated above, the applicants humbly submit that they are entitled to the reliefs prayed for, and the O.A. deserves to be allowed with cost and till such time the O.A. is allowed, the temporary stay granted by this Hon'ble Tribunal on 23.8.2002 in O.A. No. 367/2002 be continued.

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VERIFICATION

I, Shri Gopal Ballav Paul, Son of Late Gopi Mohan Paul, aged about 34 years, presently working as Salesman in Spear Canteen CSD, HQ, CI Force (NE), C/o 99 APO, one of the applicants in the instant application duly authorized by the other applicants to verify the statements made in this rejoinder and to sign this verification. Accordingly I declare that the statements made in paragraph 1 to 10 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of ~~October~~ November, 2002.

Gopal Ballav Paul.

23rd

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

In the matter of :

O.A. No. 267 of 2002

~~17-10-2002~~

Shri Gopal Ballav Paul & Ors.

-vs-

Union of India & Ors.

-And-

In the matter of

Rejoinder submitted by the applicant in reply to the written statement submitted by the Respondent no. 6.

The applicant above named most humbly and respectfully begs to state as under :

1. That with regard to the statement made in paragraph 3 and 4 of the written statement filed by the respondent no. 6 to the extent that most of the troops have gone on western border and merely a skeleton and headquarter 3 corps unit are presently stationed and they may also required to be moved on short notice is a deliberate false statement. In this connection it is further submitted that the contentions of the respondents that the strength of 3 Corps is drastically decreased in Sales of the Canteen and there is a likelihood of closing down the Spear CSD Canteen as and when the

Filed by the applicant
through Smt. G. N. Chakravarty
and recorded on 22-10-2002. 102
Date

Headquarter 3 Corps moves from the present location are categorically denied. In each and every month the sales of the spear CSD canteen stands to Rs. 30 to 35 lakhs. It is relevant to mention here that even during the last two months i.e. August and September, 2002 the sale of the spear CSD Canteen stood about Rs 30 lakhs per months. Moreover, a large number of troops of different units such as EME Unit, Zonal Workshop, Dog Unit, MH 165 Unit, Station Headquarter, 14 Veterinary Hospital, GE 868, 137 Works Engineer, BCSR, Transit camp, 3 COSR, 3 CESR, 86 FWR, Field Ambulance, 417 Independent Regiment, 12 AIR, 11 TAC, Core Camp, 381 Supply Depot, 5003 ASC Battalion, 6 Bihar Regiment, 7003 EME, 50 Company etc. are the consumers of the said Spear CSD canteen. It is also relevant to mention here that Maha Regiment as well as Assam Regiment very recently came down to this part of the Region and the troops of the aforesaid units joined as consumers of the spear CSD Canteen. There are altogether troops of 34 units enjoying the benefit of the Spear Canteen Service at Ranga Pahar, Dimapur. It is stated the said spear CSD canteen was established say about 25 years back and there is no chance or possibility of abolition of the same. The aforesaid pleas of the respondent no.6 is adopted deliberately which is contrary to the records and the same is also contradictory to the statement of the other respondents made in their written statement.

3. The applicants rely on the contentions advanced in the Original Application, documents annexed therein, written statement filed by the other respondents and the rejoinder filed by the applicants at the time of hearing.

In the facts and circumstances stated above, the original application deserves to be allowed with costs.

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VERIFICATION

I, Shri Gopal Ballav Paul, Son of Late Gopi Mohan Paul, aged about 34 years, presently working as Salesman in Spear Canteen CSD, HQ, CI Force (NE), C/o 99 APO, one of the applicants in the instant application duly authorized by the other applicants to verify the statements made in this rejoinder and to sign this verification. Accordingly I declare that the statements made in paragraph 1 to 3 are true to my knowledge and I have not suppressed any material fact.

I sign this verification on this the 23rd day of November, 2002.

Gopal Ballav Paul