

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 594 of 2002

(Indore), this the 21st day of July, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

A.K. Mukherjee
S/o Shri Hari Gopal Mukherjee,
Aged about 47 years.
796, Beoharbag,
Jabalpur

APPLICANT

(By Advocate - Shri M.Sharma)

VERSUS

1. Union of India
Through Secretary,
Ministry of Defence, South
Block New Delhi.
2. The Commandant(CMM)
Jabalpur(M.P.)
3. All India Defence Civilian
Canteen Employees' Union,
A Registered Trade Union
bearing Registration No.3947
having its Head Office at A-78,
Major Bhola Ram Enclave,
Pochampur, Sector-23,
Papan Kala, Delhi -45.
Through it's President.
Shri V.V.Mathur

RESPONDENTS

(By Advocate - Shri Om Namdeo)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

" ii) Quash and set aside the impugned order dated 22.6.2002(Annexure-A-1).

iii) Hold and declare the impugned verbal discontinuance/termination of the applicant is bad in law, hence set aside, with a further direction that the service of the applicant be treated continuous without any break throughout with all consequential benefits, and arrears thereof

iv) Direct the official respondents to grant all the benefits of pay, perks and status to the applicant in terms of the directions of the Apex Court and treat the applicant as regular Government servant in regular establishment with appropriate weight age to the long 28 years' service and other pay, perks and status as would be applicable to the applicant by virtue of his status, with arrears thereof".

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2. The brief facts of the case are that the applicant is working in the Department Run Canteen at CMM, Jabalpur (formerly known as Army Ordnance ^{School &} Depot). Initially, he has performed ^{as} his duties as Salesman in the Canteen but some time in 1979 he was also given additional duties of liaisoning work. The liaisoning work involved gathering the requirement of the Unit Canteen and on the basis of the same procuring material and goods from the CSD Depot, Jabalpur. The applicant was required to place demand on the Depot likewise and was required to physically receive the goods for and on behalf of the Unit Canteen at the CSD Depot and get it carted to the Unit Canteen. In the year 1995, the applicant was also directed to perform the duties of manual updation of stock ledger, which involved posting of receipts etc. During this period the salary of the applicant ranged between Rs.400/- to Rs.800/-. Besides a Board of Officers was constituted in the year 1995 with regard to fixing of remuneration of the applicant. After considering the long services rendered by the applicant, the Board of Officers recommended a review of the salary with higher annual increment, on the basis of which it was recommended that the applicant be placed on a regular pay scale of Rs.1600-15-1750 to be effective from 1.1.1996. The applicant was asked to sign an agreement for working on a consolidated salary of Rs.2,000/- per month in the Unit Run Cinema. As the execution of fresh agreement would have the effect of wiping the entire past services of the applicant in the Unit Run Canteen, he refused to sign the agreement. The respondents had withheld the salary of the applicant for the month of May, 2002. According to the applicant, his services have been orally terminated on 27th July, 2002 after 28 years of his service. Hence he has filed this O.A. claiming the afore-mentioned reliefs.

3. The respondents in their reply have submitted that the applicant did not join under the respondents as a Salesman since September, 1974. According to the respondents, the applicant was only a part time worker. They have also stated that the Board of Officers did recommend a higher scale of pay, but because of the status of the applicant - a part time worker - The Commandant decided



to approve only Rs.1050/- as a part time employee. They have also stated that the applicant was never a regular worker but always a part time worker, and he has not produced any evidence for having been appointed as a regular employee. In support of their claim, the learned counsel for the respondents has drawn our attention to letter dated 10.10.1997 (Annexure-R-II) which makes it amply clear that the applicant was only a part time worker.

4. Heard the learned counsel of both the parties. The learned counsel for the applicant has stated that the applicant has put in 28 years of service. He has been regularly doing work of salesman. The learned counsel has relied on the decision of the Hon'ble Supreme Court in the case of Union of India and others Vs. M. Aslam and others, (2001)1 SCC 720 wherein it has been held that the employees of Unit-run Canteens of army, navy and air force, are government servants, and they are entitled to benefits of service and pay, as a government servant. The learned counsel has contended that in view of the aforesaid decision of the Hon'ble Supreme Court, the status of the applicant is clear that he is a Government servant and he is entitled to an equivalent scale as admissible to similarly situated employees of the CSD Depot. The learned counsel has contended that instead of regularising the services of the applicant and granting him regular pay scale, his services have been terminated by the respondents and his entire past service of 28 years has been wiped out. He has, therefore, prayed that the respondents be directed to reinstate the applicant and grant him regular pay scale.

5. On the other hand the learned counsel for the respondents has stated that the applicant was never appointed as a full time worker. No appointment order has been issued to him and he has also submitted that the applicant has not been working since 1974 as claimed by the applicant.



6. We have given careful consideration to the arguments advanced on behalf of both the sides.

7. We find that the applicant has put in 28 years of service as it is evidently clear from the recommendations made by the Board of Officers at Annexure-A, at page 21 of the OA, wherein they have recommended for grant of pay scale of Rs.1600-15-1750 from 1.11.1995 and they have also recommended that 'additional DA to be paid from 01 Jan 96 onward equivalent to increased rates as applicable to Central Govt employees'.

It has also been admitted by respondents in their note dated 9.11.1995 (7310/URC) (filed along with the OA at page 22), that the applicant "is performing the duties of manual updation stock ledgers. The task involves posting in of receipts (on collection of stores) and issues of times(every day). In addition, the indl is frequently detailed for liaison with the CSD Depot,Excise Office etc in connection with passing of indents,clearance of debit/credit notes and permit fees. Normally the tasks of the individual take 7-8 hours".

The Hon'ble Supreme Court in the case of M.Aslam (supra) has held that "the employees of the Unit-run Canteens will draw at the minimum of the regular scale of pay available to/their counterparts in CSD. Moreover, the Ministry of Defence is directed to determine the service conditions of the employees in the Unit run Canteens at an early date".

8. In view of the aforesaid decision of the Hon'ble Supreme Court, and the fact that the applicant has put in 28 years of service in the Unit run canteen, the respondents are directed to consider reinstatement of the applicant to the original post or an equivalent post and consider grant of minimum 90% of the regular pay scale available to his counterpart in CSD, and grant other benefits as directed by their Lordship.

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in the case of M. Aslam (supra) within a period of four months from the date of communication of this order.

9. In the result, the OA is allowed in the above terms.
No costs.

(Medan Mehan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पूँछन सं ओ/व्या..... जबलपुर, दि.....
प्रतिलिपि अन्वेषितः—

(1) सदिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आनेकक श्री/श्रीमती/व्यु..... के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/व्यु..... दें काउंसल
(4) काउंसल, केसा. जबलपुर न्यायालय

मुद्रा एवं आदर्शक कार्यसाही देतु

M. Aslam
Advocate
DMS
5-8-84
उपर रजिस्ट्रर

Issued
On 5.8.84