

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 29.11.2011

OA No. 461/2011

Mr. Amit Mathur, counsel for applicant.

Mr. Col. Veerendra Mohan, OIC, Legal Cell, HQ 61 Sub Area, departmental representative is present on behalf of the respondents.

Heard. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of November, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Original Application No. 164/2011

Jitendra Singh Mawar
s/o Shri Girdhari Lal Mawar,
Ward No.8, Behind Garh (Reengus),
Distt. Sikar, erstwhile employee of
Chinkara Extension Counter,
Behror, Distt. Jaipur.

.. Applicant

(By Advocate: Shri R.S.Bhadauria)

Versus

1. Union of India.
through Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
2. The Quartermaster General,
Integrated Headquarter of MOD (Army),
DHQ PO, New Delhi
Through the Chief of Army Staff.
3. The Chairman,
Chinkara Canteen,
C/o Commander 61 (1)
Sub Area C/o 56 APO.

.. Respondents

(Col. Veerendra Mohan, OIC, Legal Cell, HQ 61 Sub Area,
departmental rep. for respondents.

Original Application No. 461/2011

Gajadhar Sharma
 s/o late Shri S.L.Sharma,
 r/o D-149, Jagdambey Nagar,
 Heerapura Power House,
 Jaipur.

.. Application

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
 through its Secretary to the Govt. of India,
 Ministry of Defence,
 South Block,
 New Delhi.
2. The Chairman,
 Laungewala Canteen,
 Jaipur Cantt.
 Headquarter 45, INF BDE,
 PIN-908045 c/o 56 APO,
 Military Area, Jaipur

.. Respondents

(Col. Veerendra Mohan, OIC, Legal Cell, HQ 61 Sub Area,
 departmental rep. for respondents.

ORDER (ORAL)

Both the OAs involving similar question of facts and law

are being decided by this common order.

2. Reply on behalf of the respondents in both the OA Nos. 164/2011 and 461/2011 has been filed. The respondents have raised the issue with regard to maintainability of the aforesaid



OAs as the applicants are employees of the Unit Run Canteens (URCs) and submitted that service matters of the employees of the Unit Run Canteens including all matters relating to the conditions of their service are in no way connected with any of the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation or society owned or controlled by the Government, as respects, remuneration (including allowances), pension and other retirement benefits, tenure including confirmation, seniority promotion, revision, premature retirement and superannuation, leave of any kind, disciplinary matters or any other matter whatsoever. It is also stated that Canteen Service Depot and Unit Run Canteens are not one and the same thing. The Unit Run Canteens are purely a unit level venture within the units/sub-units of the Armed Forces to sell items purchased from the Area Canteen Services Depots. It is further submitted that such canteen are not even funded by the Consolidated Funds of India or any public funds. The sale proceeds of the Unit Run Canteens are remitted to the regimental funds and are utilized for the welfare activities within in the unit. The relationship between the two establishments thus is that of the Seller and Buyer and it is neither an Employer and Employee relationship nor that of the Principal and Agent.



Thus, Section 14 of the Administrative Tribunals Act, dealing with the jurisdiction of the Tribunal does not cover the present dispute of the applicants and, therefore, the applicants are not entitled to invoke jurisdiction of this Tribunal by way of filing the present OAs. Further submitted that these OAs deserve to be dismissed in the light of the judgment rendered by the Hon'ble Supreme Court in the case of R.R.Pillai through LRs vs. Commanding Officer, HQ SAC (U) and Ors. reported in AIR 2010 SC 188.

3. The learned counsel appearing for the applicants submitted that the judgment of the Hon'ble Supreme Court in the case of R.R.Pillai (supra) is not applicable and the judgment in the case of Union of India vs. Mohd. Alsam reported in 2001 (1) SCC 720 is applicable and tried to distinguish the judgment passed by the Hon'ble Supreme Court in the case of R.R.Pillai.

4. Having heard the rival submissions of the respective parties and upon careful perusal of the judgment rendered by the Hon'ble Supreme Court in the case of R.R.Pillai (supra), we considered the submissions advanced on behalf of the parties, whether the present OAs are maintainable or not in the light of the aforesaid judgment.

5. With regard to the submissions advanced on behalf of the applicants, as they relied upon the judgment in the case of



Mohd. Aslam (supra), it is evident that reference has been made to Three Judge Bench regarding correctness of the view of the Hon'ble Supreme Court in the case of Mohd. Aslam. The Hon'ble Supreme Court having considered the ratio decided in the case of Kona Prabhakara Rao, V. M.Seshagiri Rao and Anr. AIR 1981 SC 658 and Satrucharla Chandrasekha Raju v. Vyricherla Pradeep Kumar Dev and Anr. reported in AIR 1992 SC 1959 observed as under:-

"8. In the case of Aslam's case (supra) a Bench of this Court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non-Public Funds. Further observation regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are, by no stretch of imagination, employees of the Government or CSD. Additionally, in Aslam's case (supra) reference was made to Chandra



Raha and Ors. v. Life Insurance Corporation of India (1995) IILL 339 SC. The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State."

6. With regard to the question whether URC can be treated as instrumentality of the State, the Hon'ble Supreme Court observed as under:-

"10. The question whether the URC can be treated as an instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment. From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the Government employee at any stage. In Aslam's case (supra) CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1884 rules were operative."



7. The answer to the reference was given by the Hon'ble Supreme Court holding that employees of the URCs are not Government servant.

8. After thoroughly considering the ratio decided by the Hon'ble Supreme Court, it is settled that the employees of the URCs are not Government employees and in view of this fact, the applicants in the present OAs cannot invoke the jurisdiction of this Tribunal under Section 14 of the Administrative Tribunals Act, 1985. Therefore, both the OAs deserve to be dismissed as having not maintainable in the light of the judgment rendered in the case of R.R.Pillai (supra).

9. Accordingly, both the OAs stand dismissed as not maintainable with no order as to costs.

(ANIL KUMAR)
Adm'y. Member

(JUSTICE K.S.RATHORE)
Judl. Member

R/