

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4258/2014
M.A.No.3912/2014
M.A.No.15/2015

Order Reserved on: 12.07.2016
Order pronounced on 15.07.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Pradeep Kumar Kalyan (Sales Man)
S/o Sri Paltu Ram
Aged about 47 years
R/o A 101, RG Complex
Motiakhan, Paharganj
Delhi – 110 055. Applicant

(By Advocate: Mr. Arvind Kr. Shukla with Mr. Deepak Kumar)

Versus

1. Union of India
Through Secretary Defence
South Block
New Delhi.
2. Deputy Director
General Canteen Services (DDGCS)
IHQ MOD (Army) OMG's Branch
L-Block, Room No,
16, Church Road
New Delhi – 110 001.
3. Commandant
Military Hospital
Rorkee
District Haridwar.

4. Officiating Registrar and OC Tps
 Military Hospital Roorkee
 District Haridwar

5. Adhyaksha Adhikari
 Unit Run Canteen
 Minlitary Hospital Roorkee
 District Haridwar.

6. Commanding Officer
 Military Hospital Roorkee
 District Haridwar. ... Respondents

(By Advocate: Dr. Ch. Chamsuddin Khan for Rs No.1 to 3 and Mr. Manu Padalia for Mr. Ankur Chhiber for Rs No.4 to 6)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, a Salesman in the Respondent-Unit Run Canteen of the Military Hospital, Roorkee, filed the OA questioning the Annexure A2 - Termination Order No.12009/URC/ACCT/13 dated 12.02.2014 - issued by the 5h Respondent.

2. After the notices in the OA are served on the respondents, a short affidavit was filed on behalf of the respondents 4 to 6 raising preliminary objection of jurisdiction of this Tribunal in respect of the service matters of Unit Run Canteen employees.

3. In **Arun Agarwal v. Nagreeeka Exports (P) Ltd.**, (2002) 10 SCC 101, it was held that the question regarding the jurisdiction of Court is required to be decided as a preliminary issue. Therefore,

Court is obliged to decide the question of jurisdiction first without compelling the parties to undergo the stress of a regular hearing.

4. Accordingly, heard Shri Arvind Kr. Shukla and Mr. Deepak Kumar, the learned counsel for the applicant and Dr. Ch. Chamsuddin Khan, the learned counsel for respondents 1 to 3 and Shri Manu Padalia for Mr. Ankur Chhiber, the learned counsel for respondents 4 to 6 on the preliminary issue of jurisdiction of this Tribunal to entertain the OA, and also perused the pleadings on record.

5. Admittedly, the applicant is working as Salesman in the Unit Run Canteen of Military Hospital, Roorkee as on the date of issuance of the impugned termination order. As admitted by the applicant himself in the OA, his service conditions are governed by the terms and conditions of Unit Run Canteen employees.

6. In **Union of India v. M. Aslam**, (2001) 1 SCC 720, the Hon'ble Apex Court held that the employees of Unit Run Canteens of the Armed Forces are government employees. Doubting the correctness of the said decision, **R.R.Pillai (Dead) through LRs v. Commanding Officer, HQ SAC (U) and Others**, (2009) 13 SCC 311, was referred to a three Judge Bench. The Hon'ble Apex Court in **R.R.Pillai** (supra), overruled **M. Aslam** (supra), and while holding that the same was not correctly decided, further held that the employees of Unit Run Canteens are not government servants.

7. In **Union of India & Others v. Gobinda Prasad Mula**, (2012)

13 SCC 565, the respondent was employed as Manager in Unit Run Canteen of Air Force Station in Kumbhigram, Assam. When he was terminated from service, he questioned the termination order by filing an OA before the Central Administrative Tribunal, Calcutta Bench, and when a preliminary objection of jurisdiction on the ground that the respondent not being a public servant was raised, the Tribunal relying upon **M. Aslam** (supra), held that the OA is maintainable and also allowed the OA on merits. The Writ Petition filed against the said order was also dismissed on merits. However, the Hon'ble Apex Court following **R.R.Pillai** (supra), while allowing the appeal of the Union of India, observed as under:

"9. The bone of contention so canvassed before us relates to the question of Respondent holding a civil post and thus being subject to the jurisdiction of the Tribunal. However, from the discussions in the impugned judgment and order of the High Court no indication could be gathered as to whether the Appellants herein had canvassed the issue pertaining to the jurisdiction of the Tribunal to entertain the application filed by an employee working in a URC or not. However, we are informed, by learned Additional Solicitor General, of such issue being canvassed before the High Court but not considered. Be that as it may.

10. We have perused the observations made by the Tribunal insofar as the answer to the preliminary objection raised by the Appellants, i.e., to hold that the Respondent herein holds a civil post relying upon the observations made in Aslam's case (supra), is concerned. The said decision has now been overruled by the decision of three Judge Bench of this Court in R.R. Pillai's case (supra), wherein this Court has specifically observed that an employee working in a URC canteen is not the holder of a civil post. The relevant paragraphs are extracted below :

"12. The factors highlighted to distinguish Chotelal's case ((1999) 1 SCC 554 : (AIR 1999 SC 376 : 1999 AIR SCW 29) in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam's case and Chotelal's case. In our view, therefore, Aslam case was not correctly decided.

15. It is to be noted that financial assistance is given, but interest and penal interest are charged. URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants."

11. In view of the observations made in the abovesaid decision, in our view, the Tribunal was not justified in entertaining the application filed by the Respondent and should not have answered the prayer in the application in favour of the Respondent.

12. Resultantly, while allowing this appeal, we set aside the orders passed by the Tribunal and the High Court in Original Application No.789 of 2008, dated 07.07.2004 and Writ Petition No.788 of 2004, dated 22.07.2008, respectively. We further reserve liberty to the respondent, if he so desires, to approach the appropriate forum for redressal of all his grievances. No order as to costs. Ordered accordingly."

8. In the circumstances and in view of the decision of the Hon'ble Apex Court in **R.R.Pillai** (supra), the applicant who is an employee of the Unit Run Canteen of the Armed Forces cannot be treated as a Government servant and accordingly, the OA is dismissed for want of jurisdiction. However, this order shall not preclude the applicant from approaching a competent Court for redressal of his grievances, in accordance with law. No costs.

9. In view of the aforesaid order, MA No.3912/2014 and MA No.15/2015 stand disposed of.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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