

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 13.03.2019

ORIGINAL APPLICATION NO. 060/00510/2017

Chandigarh, this the 5th day of April, 2019

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Dina Nath son of Shri Ram Brij Parjapati, resident of 21, Mall Road, Ward No. 5, Ferozepur Cantt., District Ferozepur, Punjab (Aged about 45 years), (Group-D).

....APPLICANT

(By Advocate: Shri Padamkant Dwivedi)

VERSUS

1. Union of India through its Secretary, Ministry of Defence, 101-A, South Block, New Delhi-110011.
2. The GOC Officer, HQ7, Infantry Division, 29 Company, Army Service Cor (Supply Depot), Ferozepur Cantt. 152001.
3. Directorate of General of Supplies & Transport, Quartermaster General's Branch, Integrated HQ of MoD (Army), Sena Bhawan, New Delhi-110105.

....RESPONDENTS

(By Advocate: Shri Sanjay Goyal)

ORDER

P. GOPINATH, MEMBER (A)

The applicant was employed as casual labourer by the respondents in the year 1995. Applicants pleads that as per Hon'ble Apex Court judgment in the case of **Secretary State of Karnataka and Others vs. Uma Devi and Others**, Civil Appeal No. 3595-3612 of 1999 decided on 10.4.2006, the Govt. was to take

steps as a one-time measure to regularize the employees, who have worked for 10 years or more.

2. The applicant was before this Tribunal in O.A. NO. 060/162/2015, which was disposed of on 5.3.2015, with a direction to respondents to take view on his pending representation by passing a speaking order thereon. Pursuant to above, the respondents have passed speaking order dated 15.9.2015 (Annexure A-5), wherein the claim of applicant for regularizing his service was rejected. The prayer of the applicant in the instant Original Application (O.A.) is for setting aside the said order dated 15.9.2015 (Annexure A-5) with a direction to respondents to regularize the service of the applicant.

3. The respondents in their written statement, submit that the applicant was employed as part time helper in the LPG Shed (Sainik Gas Agency) in December 1995. The applicant was being paid from the dealership commission accrued from operating and running the LPG agency. In April 2014, the LPG Gas Agency was transferred from respondent unit to 7 Infantry Ordnance Unit. In view of transfer of Gas Agency the applicant was employed in the Unit Run Canteen on humanitarian ground to ensure that a sum of Rs. 6000/- earned by him in the LPG Gas Agency would be available to him and would not affect his livelihood. Whereas the earlier payment to the applicant was made from the Sainik Gas Agency, subsequently payment was made from the Unit Run Canteen.

4. In the year 2014, direct recruitment of Group-D employees was carried out in the respondent office. Advertisement for this post was published in the Employment News. However, the applicant who was working in the Unit Sainik Gas Agency did not apply for the said recruitment. The respondent submit that is so on the ground that he would not meet eligibility criteria and applicant abstained himself from the recruitment process. However, on completion of recruitment process the applicant represented for his regularization. The respondents inform him that his educational qualification and age, both debar him from any permanent engagement.

5. We have heard the learned counsel for the parties and gone through the pleadings available on record with their able assistance.

6. In recent judgment of the Apex Court in the case of **R.R. Pillai (Dead) through Lrs. Vs Commanding Officer HQ S.A.C. (U) and Ors.** Civil Appeal NO. 3495 of 2005 decided on 28.4.2009, it has been held that Unit Run Canteen Employees are paid out of Non Public Funds and not from the Consolidated Fund of India and hence they are not government employees. On the same analogy, the applicant having worked in the Sainik Gas Agency and Unit Run Canteen cannot also be held to hold a government post, as his payment was not made from the Consolidated Fund of India. This being so, the judgment of Uma Devi (supra) is not applicable to applicant since he was engaged by the Sainik Gas Agency and

subsequently by the Unit Run Canteen which cannot be treated as akin to engagement by the Govt. of India.

7. The Apex Court doubting the correctness of the view of an earlier judgment rendered in the case of **Union of India vs. M. Aslam and Ors.** reported in 2001 (1) SCC 720, referred the matter regarding status of Unit Run Canteen (URC) employees in Armed Forces to a larger Bench. While considering the matter the Apex Court held that the view in Aslam case (supra) the Bench of the Court proceeded on incorrect factual premise that (URC) are funded from the Consolidated Fund of India. In the said case it was also concluded that (URC) are funded by CSD and articles were also supplied by the CSD. No such funding is made by the CSD. Only refundable loan can be granted by the CSD to URC @ interest laid down by it from time to time. Whenever URC's makes an application for financial assistance, whenever financial assistance is give, interest and penal interest are charged. URC purchase articles from CSD depot and there is no automatic supply and relation between URC and CSD. The relation is one of buyer and seller and not principal and agent. The URCs are not part of CSD and are a purely private venture and their employees are not employees of the government or even the CSD. URC employees after 5 years of service may be declared as permanent employees of URC only. However, they still do not get the status of government employee. The Apex Court, therefore, held that employees of URCs by no stretch of imagination can be held akin to government employees.

8. On the direction of the Tribunal in O.A. No. 162/2015 wherein the applicant had sought the same relief of regularization of his service, the respondents issued Annexure A-5 detailed speaking order rejecting his claim. In the said speaking order, it is stated that the applicant was not appointed against any regularly sanctioned post.

9. The Govt. of India had launched a scheme called Casual Labourers (Grant of Temporary Status and regularization) Scheme, 1993. Regarding prayer of the applicant for being regularized against this Scheme, we find that he is not entitled to this benefit. This Scheme was not ongoing Scheme and temporary status was conferred on casual labourers who were fulfilling the conditions incorporated in clause (iv) of the said Scheme. This was one time Scheme of 1993, not extended beyond the said year. The applicant was appointed in 1995 much after the closure of the Scheme and was not covered by the Scheme for conferment of temporary status. The applicant is also not covered by the Uma Devi case (supra) as he was not appointed against a regular post. The applicant was being paid from the dealership commission of the Sanik Gas Agency and not from the Consolidated Fund of India cannot be said to be holder of civil post paid out of the Consolidated Fund of India.

10. In view of above and the decision of Apex Court cited in para 4 above, the O.A. is found to be devoid of any merit, and therefore dismissed. No costs. Pending M.A., if any, stands disposed of.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 05.04.2019
‘SK’



