

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA).**

O.A.NO.063/922/2017 Date of order:- 06.3.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

1. Smt. Rinku Kashyap w/o Sh. Sanjeev Kapil, r/o Kashyap Niwas, Bhatta Kufar, Distt. Shimla, H.P., presently working as Civil Librarian, Head quarters, ARTRAC, Shimla, H.P.
2. Smt. Hem Lata w/o Sh. Sunil Sharma, r/o Kamal Kunj Building, Shiv Nagar, Shimla, H.P., presently working as Civil Librarian, Head quarters, ARTRAC, Shimla, H.P.

.....Applicants.

(By Advocate :- None)

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. General Officer Commanding in Chief, Head quarter, Army Training Command, Shimla, H.P.
3. Head quarters, ARTRAC, Shimla, through Brig. Administration, Head quarter, Army Training Command, Shimla, H.P.

...Respondents

(By Advocate : Ms. Shubh Mahajan).

O R D E R (Oral).

Sanjeev Kaushik, Member (J):

Two applicants have jointly filed this OA under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief(s):-

"i) That the Original Application be allowed with throughout costs and the impugned order Annexure A-1 issued by the respondent ARTRAC on dated 24th July, 2017 be quashed and set aside, being illegal, unconstitutional and unreasonable;

ii) That the respondents be directed not to change the terms and conditions of the services of the applicants retrospectively and continue with the services of the applicants and allow them to complete 10 years of

service which is required for the regularization as per the policy formulated by the respondent no.1 vide Annexure A-5;

iii) That the original application be allowed with throughout costs and the respondents be directed to maintain proper record of the applicants as per their original appointments and give the monetary and other benefits as is being given to the similar situated army staff and regular staff;

iv) That this Id. Tribunal be pleased to fix the personal responsibility of the authority responsible for the illegalities committed in the respondent department;

v) that the respondents may kindly be directed to pay the wages/salary to the applicant as applicable to the similar situated army and regular staff performing the similar nature of work as that of the applicants, and as per the Central Government policy along with all benefits and the service conditions be also regulated equivalent to the army staff".

2. The respondents have not filed reply. However, learned counsel for the respondents states that there is no necessity to file written statement as the issue raised in the instant OA has already been decided by this Tribunal in the case of Sohan Singh & Ors. Versus Union of India & Ors. (O.A.No.063/00682/2017) decided on 10.1.2019.

3. None was present on behalf of the applicants despite one pass-over. Accordingly, we have heard the learned counsel for the respondents and examined the material on file.

4. The preliminary issue of jurisdiction in this case is no longer res-integra and stands clinched by a decision of this Tribunal in a bunch cases in O.A. No.063/00682/2017 etc titled **Sohan Singh & Ors. Versus Union of India & Ors.** decided on 10.01.2019, holding that this Tribunal has no jurisdiction over the dispute as raised in this case as the incumbents were/are being paid out of regimental funds and not out of consolidated fund of India. The relevant observations made in the indicated cases are reproduced as under:-

"The Ernakulam Bench of this Tribunal in O.A. No. 726 of 2008 titled XAVIER ANTONY & OTHERS VS. UNION OF INDIA AND OTHERS decided on 10.12.2009 has delved over the issue in detail and held that the persons, who are paid remuneration from regimental funds, are not entitled to invoke the jurisdiction of this Tribunal. The observation made by the Division Bench of the Tribunal are reproduced in toto, as under :-

"...it clearly indicates that the appointment is purely private payable out of the Regimental Fund. Initially, these dhobis were being paid at a particular rate per cadet on the basis of the actual number of cadets a dhobi is required to serve, but later on, a monthly salary, no doubt, has been fixed for being paid to such dhobis. The terms of appointment, no doubt, vest certain control over such dhobis on the Commandant of the Academy but nonetheless such control cannot impress the post of dhobis with the character of a civil post. It is also borne out from the record that each cadet is granted a monthly dhobi allowance and the said allowance is put into a fund called the "Regimental Fund" under the management of the Commanding Officer of the institution. At this stage, it would be appropriate to notice some provisions of the Defence Services Regulation which would give an idea as to the characteristic of the Regimental Fund. Under para 801 of the Regulation, public funds have been defined as such:

"801. (a) Public funds.□Include all funds which are financed entirely from public money, the unexpended balances of which are refundable to the Government in the event of not being devoted to the objects for which granted, and also

- (i) unissued pay and allowances;
- (ii) office allowance fund; and
- (iii) the estates of deceased men and deserters."

4. Para 801(b) defines "Regimental Fund" to mean comprising all funds, other than public funds, maintained by a unit.

5. Para 820 provides for administration of such Regimental Fund and para 820(a) clearly indicates that all funds other than public funds as defined in para 801 maintained by a unit, which are financed either wholly or partly from public money. The Regulation further provides that the Commanding Officer acts as a trustee in relation to the "Regimental Fund" and is responsible that the Funds are properly applied with special reference to the object of the Fund and for the benefit of the personnel or unit as a whole.

6. In view of the characters of the Regimental Fund as discussed above, we have no hesitation to come to the conclusion that the said Fund cannot be held to be a public fund by any stretch of imagination and the dhobis paid out of such Fund cannot be held to be holders of civil posts within the Ministry of Defence so as to confer jurisdiction of the Central Administrative Tribunal to issue directions relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence.(Emphasis supplied)

7. In the aforesaid premises, the contention of Mr Mahajan, learned Senior Counsel that the Central Administrative Tribunal has no jurisdiction to go into the question of service conditions of such dhobis has to be sustained and consequently, the impugned order of the Tribunal has to be set aside. We, accordingly, set aside the impugned judgment of the Tribunal and dismiss the OA. This appeal is allowed but, in the circumstances, without any order as to costs."

9. The above decision has not been upset in any subsequent judgments - rather reiterated in M. Aslam (supra) when the Apex Court has stated therein as under:-

"Mr Goswami, the learned Senior Counsel appearing for the Union of India strongly relied upon the judgment of this Court in Union of India v. Chotelal 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 para 802 of the Defence Services Regulation. Payment to such dhobis out of the regimental fund and the character of that regimental fund was the determinative factor."

10. Thus, the real test to arrive at as to whether an employee comes within the fold of Government servant and consequently is subject to the jurisdiction of this Tribunal, the acid test is whether the funds required in employing such individual are from consolidated funds (i.e. public funds) or non public funds. When the expenses are met from non public fund, notwithstanding the fact that the rules and regulations are framed and the employees are under the control of the Government Officers (here Commanding Officer, INS Venduruthy), the same would not bring such individual paid from Regimental (non public fund) within the purview of the A.T. Act. Hence, we are in respectful agreement with the earlier decision in the case of Joseph Raju in OA No. 289/2007 as upheld by the High Court and the decision in Chotelal (supra) also supports the case of respondents.

11. In view of the above, the Tribunal lacks jurisdiction and hence, the OA is dismissed on the point of jurisdiction. The time taken by the applicants in prosecuting the case in this Tribunal would however, be excluded for working out limitation in any other judicial forum."

7. Prior thereto, in the case of **UNION OF INDIA AND OTHERS V. CHOTELAL AND OTHERS**, JT 1998 (8) SC 497, relating to Dhobis appointed to wash the clothes of cadets at the National Defence Academy, Kharakwasla, question arose whether the Dhobis were holders of civil post or not. Reversing the decision of the Tribunal that it had jurisdiction to entertain the original application, the Hon'ble Supreme Court held as under:

"3. In view of the rival contentions raised, the most crucial question that arises for consideration is what is the nature of the post against which the Dhobis get their appointment for discharging the duties of washing clothes of the cadets? From the terms and conditions of the letter of appointment issued to such Dhobis it is crystal clear that the appointments cannot be held to be one against any civil post. On the other hand it clearly indicates that the appointment is purely private payable out of Regimental Fund. Initially these Dhobis were being paid at a particular rate per cadet on the basis of actual number of cadets a Dhobi is required to serve, but later on a monthly salary, no doubt, has been fixed for being paid to such Dhobis. The terms of appointment, no doubt vest certain control over such Dhobis on the Commandant of the Academy but nonetheless such control cannot impress the post of Dhobis with the character of a Civil post. It is also borne out from the

record that each cadet is granted a monthly Dhobi allowance and the said allowance is put into a fund called 'Regimental Fund' under the management of Commanding Officer of the institution....."

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6. In view of the characters of the Regimental Fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of Civil post within the Ministry of Defence so as to confer jurisdiction of the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence."

9. Not only that, even this very Bench of the Tribunal in the case of Dyalu Ram Vs. Union of India & Others, vide order dated 8 November 2005, held that the applicants were working as 'civil cooks' continuously since the date of their initial appointment and as such they could not have been treated to be privately engaged as daily wagers and Regimental Funds are not private funds raised out of individual contributions made by the Junior Commissioned Officers. Thus, the order of termination was quashed with a direction to reinstate them in service. The Court had denied the back wages but directed that the applicants should be treated to be in continuous service as civil cooks for the period during which they remained out of employment. Liberty was also granted to the applicants to represent their cases for regularization before the appropriate authority and directed that if there is a scheme in existence, their applications should be considered in accordance with their position in seniority. That decision was upheld by the Hon'ble High Court. However, it was challenged in CIVIL APPEAL NO.12004 OF 2018 (ARISING OUT OF SLP (CIVIL) NO.8559 OF 2014 titled **UNION OF INDIA & OTHERS VS. DYALU RAM**. The Hon'ble Apex Court has over ruled the view taken by this Tribunal as well as Hon'ble Jurisdictional High Court, vide order dated 11.12.2018 holding as under :-

8. The position of Unit run Canteens of the Indian Army is no longer res integra following the decision of the three Judge Bench in R.R. Pillai (supra). The reference to the Bench of three Judges was occasioned as a result of a doubt having been cast on an earlier decision of a two Judge Bench in Union of India versus M. Aslam³. The Bench of three - Judges observed that despite noticing that Unit run Canteens are not funded from the Consolidated Fund of India, the two Judge Bench in M. Aslam (supra) erroneously held that these canteens are funded by the Canteen Stores Department (CSD). In R.R. Pillai (supra), after reviewing the position of regimental canteens, this Court held 3[2001 (1) SCC 720] that the employees have not been granted the status of government employees at any stage. Hence the reference was answered by holding that employees of the Unit run Canteens are not government employees. This decision has been followed in a subsequent decision in Gobinda Prasad Mula (supra).

9. In the present case, the judgment of the Tribunal is rendered unsustainable by the position of law which has been elaborated in both the above decisions. Indeed, once it is held that employees of regimental canteens are neither government servants nor are they engaged in connection with a civil post under the Union, the Tribunal would have had no jurisdiction to entertain the claim under Section 14 of the Act.

10. In this view of the matter, the directions which have been issued by the Tribunal are unsustainable. The submission which was sought to be urged by learned counsel appearing on behalf of the respondents based on the Office Memorandum dated 26 March 2012 of the Ministry of Defence is misconceived. The Office Memorandum applies to casual workers who are working in Directorates/Departments of the Ministry of Defence. Persons in the position of the respondents are not employed by either a Directorate or Department of the Ministry of Defence. Their role and position is already elaborated upon by the two judgments which we have cited above.

11. In pursuance of the judgment of the Tribunal, the respondents were reinstated, though subject to the outcome of the writ petitions. As a result of the order of reinstatement, they are continuously in the service of the regimental canteens.

12. Once we have come to the conclusion that they do not have the status of government servants, we will necessarily have to set aside the order passed by the Tribunal and the order of the High Court affirming that decision"

10. In the wake of the aforesaid discussion and legal position settled up to the highest court of the country, we have no hesitation in holding that the applicants in these cases, who were / are paid remuneration out of regimental funds, are not entitled to invoke the jurisdiction of this Tribunal and as such these cases are dismissed being barred by jurisdiction, with liberty to the applicants to approach the competent court of law for redressal of their grievance."

5. In the wake of above extraction, this case is dismissed being barred by jurisdiction, with the indicated liberty. The parties are left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P.GOPINATH)
MEMBER (A).**

Dated:- 06.03.2019.

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