

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT COURT: SHIMLA)**

O.A.NO.063/00682/2017 etc. Orders pronounced on: 10.01.2019
(Orders reserved on: 14.12.2018)

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

(I) O.A.NO.063/00682/2017

1. Sohan Singh alias Sohan Lal S/o Sh. Dhani Ram, Age 38 years R/o Vill. Ghuntri, P.O. Nerwa, Tehsil Chopal, Distt. Shimla, H.P. presently working as Civil Cook, Head Quarter ARTRAC, Shimla, H.P. 'Group D'.
2. Mahinder Kumar alias Mohinder Pal S/o Sh. Omi Chand Age 32 years R/o Vill. Jovi, P.O. Chouri Dhar, Tehsil Karsog, Distt. Mandi, H.P., presently working as Civil Cook, Head Quarter ARTRAC, Shimla, H.P. Group D.
3. Rajesh Kumar S/o Late Sh. Narayan Das aged about 39 years R/o US Club, Old Army Mess, Shimla, Tehsil and Distt. Shimla, H.P. presently working as Washerman, Head Quarter ARTRAC, Shimla, H.P. Group D.

Applicants

Versus

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

Respondents

**PRESENT: MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,
ADVOCATES FOR APPLICANTS.**

**MS. MONIKA KAUNDAL, ADVOCATE FOR
MR. K.K. THAKUR, ADVOCATE, FOR RESPONDENT**

(II) O.A.NO.063/00683 /2017

1. Devender Kumar alias Devender Singh S/o Sh. Ami Chand, age 27 years R/o Vill. Jovi, P.O. Chouri Dhar, Tehsil Karsog, Distt. Mandi, H.P. presently working as Cook, Head Quarter ARTRAC, Shimla, H.P. Group D.
2. Pradeep Kumar S/o Sh. Jagat Singh, Age 24 years R/o Vill. Bambal, P.O. Koti Uttraou, Tehsil Shillai, Distt. Sirmour, H.P. presently working as Masalchi, Head Quarter ARTRAC, Shimla, H.P. Group.

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Applicants

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. General Officer Commanding-in-Chief, Head Quarter Army Training Command, Shimla, H.P.

3. Head Quarter ARTRAC Shimla, through Brig. Administration, Head Quarter Army Training Command, Shimla, H.P.

..... Respondents

**PRESENT: MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,
ADVOCATES, FOR APPLICANTS.
MR. V. K. ARYA, ADVOCATE, FOR RESPONDENTS.**

(III) O.A.NO.063/00921/2017

1. Surender S/o Late Sh. Giaru Ram, age 41 years, R/o Beverly Quarter Bhim Rao Ambedkar Chok, Shimla-4, presently working as Civil Driver, Head Quarters ARTRAC, Shimla.
2. Manoj Kumar S/o Sh. Kesar Singh, age 37 years R/o Village Bhargan, P.O. Juni, Tehsil Suni, Distt. Shimla, H.P. presently working as Civil Driver, Head Quarters ARTRAC, Shimla, H.P. Group D.

... Applicants

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 Quarter ARTRAC Shimla, through Brig. Administration, Head Quarter Army Training Command, Shimla, H.P.

..... Respondents

**PRESENT: MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,
ADVOCATES, FOR APPLICANTS.
MS. SHUBH MAHAJAN, ADVOCATE, FOR RESPONDENTS.**

(IV) O.A.NO.063/01051/2017

1. Kashmir Singh S/o Late Sh. Ganga Ram aged about 29 years R/o Vill. Manwana, P.O. Khudla, Sub Tehsil Baldwara, Tehsil Sarkaghat, Distt. Mandi, H.P. Presently working as Civil Cook/Masalchi Head Quarter ARTRAC Shimla, H.P. Group D.
2. Ashu Kumar S/o Sh. Chet Ram aged about 27 years R/o Vill. Dhar Chandna, P.O. Dhar, Tehsil Kupwi, Distt. Shimla, H.P. presently working as Civil Cook Head Quarter ARTRAC Shimla H.P. Group D.
3. Rakesh Kumar S/o Sh. Inder Singh aged about 27 years R/o Village Chhachhil, P.O. Majhar, Tehsil Theog, Distt. Shimla, H.P. presently working as bar man Gold Course, Aanandale Head Quarter ARTRAC Shimla H. P. Group D.
4. Mohan Lal S/o Sh. Bhagat Ram, R/o Vill. Gawahi, P.O., Annadale, Tehsil and Distt. Shimla, H. P. Aged about 42 years, presently working as Mali, Head Quarter ARTRAC Shimla, H.P. Group D.
5. Vikas alias Vikas Kumar S/o Sh. Hitesh aged about 24 years R/o VPO Teewadi, Tehsil Dhampur, Distt. Bijnaur, Uttar Pradesh, presently working as Safaiwala, Head Quarter ARTRAC Shimla H.P. Group D.
6. Naresh Kumar S/o Sh. Banarsi Singh aged about 47 years R/o Village Chumrun Navada, P.O. Jangampuri, Tehsil Nagina, Distt. Bijnaur (U.P) presently working as Safaiwala Head Quarter ARTRAC Shimla H.P. Group D.

7. Kailash Chand S/o Sh. Dila Ram aged about 35 years R/o V.P.O Chaili, Tehsil and Distt. Shimla, H.P. presently working as House Keeper / Washer man, Head Quarter ARTRAC Shimla H.P. Group D.
8. Harvinder S/o Sh. Ram Singh aged about 32 years R/o Vill. Ghati, P.O. Kiarkoti, Tehsil and Distt. Shimla, H. P. Presently working as Mali, Head Quarter ARTRAC Shimla, H.P. Group D.

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Applicants

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

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Respondents

**PRESENT: MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,
ADVOCATES FOR APPLICANTS.**

MR. V.K. ARYA, ADVOCATE, FOR RESPONDENTS.

(V) O.A.NO.063/01052/2017

1. Shiv Kumar S/o Sh. Loharu Ram, Age 47 years R/o Vill. Mambala, P.O. Nanj, Tehsil Karsog, Distt. Mandi, H. P. Presently working as Civil Cook, Head Quarter ARTRAC, Shimla, H. P. Group D.
2. Devi Chand S/o Sh. Shonkia Ram, age 40 years R/o Vill. Durgapur, P.O. Badhalag, Up Tehsil Krishangarh, Tehsil Kasauli, Distt. Solan, H.P. presently working as Civil Cook, Head Quarter ARTRAC, Shimla, H.P. Group D.
3. Gumat Ram S/o Sh. Jaggu Ram, age 42 years R/o Vill. Fanoutta, P.O. Sarahan, Tehsil Karsog, Distt. Mandi, H.P. presently working as Civil Cook, Head Quarter ARTRAC, Shimla, H.P. Group D.
(Deleted vide order dated 15.3.2018)

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Applicants

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

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Respondents

**PRESENT: MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,
ADVOCATES, FOR APPLICANTS.**

MR. B.B. SHARMA, ADVOCATE, FOR RESPONDENTS.

(VI) O.A.NO.063/01053/2017

1. Durga Bahadur Thapa S/o Sh. Kharka Bahadur Thapa aged about 37 years R/o Village Tribeni Parbat PO Khorpukhra, Tehsil & Distt. Parbat, Anchal Dhaulagiri Nepal, presently working as Civil Cook Head Quarter ARTRAC Shimla H. P. Group D.

2. Joginder Pal S/o Sh. Sant Ram aged about 42 years, R/o Vill. Jovi, P.O. Chauridhar, Teh. Karsog Distt. Mandi, H.P. presently working as Waiter, Head Quarter ARTRAC Shimla, H.P. Group D.
3. Hari Saran S/o Sh. Ghani a Ram aged about 42 years R/o Village Jobi P.O. Chouridhar Tehsil Karsog, Distt. Mandi, presently working as Waiter, Head Quarter, ARTRAC Shimla H.P. Group D.
4. Dharm Dass S/o Sh. Devi Dutt aged about 37 R/o Vill. Sog, P.O. Chauridhar, Teh. Karsog, Distt. Mandi, H.P. presently working as mess boy, Head Quarter, ARTRAC Shimla H.P. Group D.
5. Vimal Bhardwaj W/o Sh. Ghanshyam Bhardwaj, aged about 35 years, presently working as Office Clerk, Head Quarter ARTRAC Shimla H.P. Group D.
6. Kuldeep Kumar alias Kuldeep Singh S/o Sh. Nath Ram aged about 40 years, R/o Village Bhyarh, Tehsil Bhoranj Distt. Hamirpur H.P. presently working as Waiter Head Quarter ARTRAC Shimla, H.P. Group D.
7. Gita Ram S/o Sh. Durga Ram, aged about 50 years R/o Vill. Kufridhar P.O. Rajhana, Tehsil & Distt. Shimla H.P. presently working as Mali, Head Quarter ARTRAC Shimla H.P. Group D.
8. Dinesh Chand S/o Sh. Madho Ram, aged about 42 years, R/o PP Sharma Cottage Near Nittu Cottage, Cemetery Road, Sanjauli Shimla, H.P. presently working as Waiter, Head Quarter ARTRAC Shimla H.P. Group D.
9. Dalip Singh S/o Sh. Rajinder Singh aged about 49 years R/o VPO Anadale, Tehsil & Distt. Shimla, H.P. presently working as Ground man, Anadale Gold Course Head Quarter, ARTRAC, Shimla, H.PK. Group D.
10. Shyam Lal S/o Sh. Hariman aged about 55 years, R/o Vill., Piarota P.O. Loharwil. Teh. Ghumarwin, Distt. Bilaspur H.P. presently working as Waiter, Head Quarter ARTRAC Shimla H.P. Group D.
11. Balwant Singh S/o Sh. Dila Ram, aged about 36 years, R/o Village Lower Brahmli P.O. Hatwar, Tehsil Ghumarwin Distt. Bilaspur H.P. presently working as Bar Attendant, Head Quarter ARTRAC Shimla H.P. Group D.
12. Naresh Kumar S/o Lt. Sh. Daya Ram aged about 39 years R/o Village Johron P.O. Puruwala (Kanshipur), Tehsil Ponta Sahib, Distt. Sirmaur, H.P. presently working as Waiter, Head Quarter ARTRAC Shimla H.P. Group D.
13. Dinesh Kumar S/o Sh. Hari Ram aged about 25 years, R/o Vill. Dhar, P.O. Dhar, Teh. Kupvi, Distt. Shimla, H. P. presently working as Waiter, Head Quarter ARTRAC Shimla H.P. Group D.
14. Sita Ram S/o Sh. Liaq Ram, aged about 33 years, R/o Vill. Dhotali P.O. Bhalu, Teh. Kupvi, Distt. Shimla, H.P. presently working as Mali, Head Quarter ARTRAC Shimla H.P. Group D.

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Applicants

Versus

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

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Respondents

PRESENT: **MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,**

ADVOCATES, FOR APPLICANTS.

MS. MONIKA KAUNDA, ADVOCATE FOR

MR. K.K. THAKUR, ADVOCATE, FOR RESPONDENTS.

(VII) O.A.NO.063/01054/2017

1. Til Bahadur Thapa S/o Sh. Mohan Bahadur Thapa, aged about 38 years R/o Vill. Dhanuvash, P.O. Bakhunde, Tehsil and Distt. Shainja, Nepal, presently working as Mess Boy Head Quarter ARTRAC Shimla H.P. Group D.
2. Ram Mehar S/o Sh. Ram Chander aged about 44 years R/o Brahma Colony, Ward No. 27, Gali No. 5, Dinod Road, Bhiwani Distt. Bhiwani Haryana presently working as ground man, Annadale Golf Course Head Quarter ARTRAC Shimla H.P. Group D.
3. Suresh Kumar S/mo Sh. Rajo Ram, aged about 30 years, R/o Vill. Thalla PO Rajera Tehsil & Distt., Chamba, H.P. presently working as Safaiwala, Head Quarter, ARTRAC Shimla H.PK. Group D.
4. Balbir Sharma S/o Sh. Ram Singh, aged about 27 years, R/o Vill. Dimaina, P.O. Korag, Tehsil Sangrah, Distt. Sirmour, H. P. Presently working as Cook, Head Quarter, ARTRAC Shimla H.P. Group D.
5. Akash Kumar S/o Sh. Sunil Kumar aged about 22 years R/o Servant Quarter No.5 Hari Niwas Longwood Shimla, H.P. Presently working as Masalchi, Head Quarter ARTRAC Shimla, H.P. Group D.
6. Sh. Manjeet Singh S/o Sh. S/o Sh. Bhalku Ram aged bout 29 years R/o Village Riyah, P.O., Tihra, Tehsil Sujanpur, Distt. Hamirpur H.P. presently working as Safaiwala, Head Quarter ARTRAC Shimla, H. P. Group D.
7. Vishal Kumar Thakur S/o Sh. Om Prakash Thakur Banarsi Aged about 35 years R/o Ram Niwas House No. 119, Near Ram Mandir, Annadale, Shimla, H.P. presently working as Ground Worker Annadale Gold Course, Head Quarter ARTRAC Shimla H.P. Group D.
8. Dinesh Kumar S/o Sh. Dola Ram, aged about 22 years, R/o VPO Janjehli, Tehsil Thung, Distt. Mandi, H.P. presently working as Safaiwala, Head Quarter ARTRAC Shimla, H.P. Group D.
9. Malkeet Singh S/o Sh. Vijay Sigh aged about 30 years R/o Village Dudhar, P.O. Khel, Tehsil Nurpur, Distt. Kangra H.P. presently working as Waiter, Head Quarter ARTRAC Shimla H. P. Group D.
10. Abhishek S/o Sh. Bharat Ram, aged about 25 years, R/o Vill. Dharya, P.O. Sadhupul, Tehsil Kandaghat, Distt. Solan, H.P. presently working as Mali, Head Quarters ARTRAC, Shimla, H.P. Group D.
11. Naresh Kumar S/o Sh. Hans Ram aged about 24 years R/o VPO Thangar, Tehsil Nerwa, Distt. Shimla, H. P. Presently working as Mess Boy, Head Quarter ARTRAC Shimla H.PK. Group D.
12. Bodh Raj S/o Sh. Teju Ram aged about 19 years R/o Vill Gunas, P.O., Shikavari, Tehsil Thunag, Distt. Mandi, H.P. presently working as Mess Boy Head Quarter ARTRAC Shimla, H.P. Group D.
13. Dharampal S/o Sh. Dhani Ram aged about 23 years R/o Village Heundi, P.O. Dabrot, Tehsil Karsog, Distt. Mandi, H.P. presently working as Masalchi Head Quarter ARTRAC Shimla H.P. Group D, H.P.

14. Bhupender Kumar S/mo Sh. Devi Ram, aged about 23 years R/o Vill., Bhatkaneta, P.O. Kuhar, Tehsil Arki, Distt. Solan, H.P. Group D, H.P.

.... Applicants

Versus

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

..... Respondents

PRESENT: **MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,**

ADVOCATES, FOR APPLICANTS.

MR. V.K. ARYA, ADVOCATE, FOR RESPONDENTS.

(VIII) O.A.NO.060/01360/2017

Sunil Kumar S/o Sh. Devi Ram, age 31 years R/o Village Kando, P.O. Bhatgarh, Tehsil Renukaji, Distt., Sirmour, H.P. presently working as Cook, Military Engineer Services Inspection Bungalow (MES IB), Shimla, H.P. Group D.

.... Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.
2. General Officer Commanding-in-Chief, Head Quarter Army Training Command, Shimla, H.P.
3. The Garrison Engineer, Military Engineer Services, Jutogh Cantt, Distt. Shimla, H.P.

..... Respondents

PRESENT: **MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,**

ADVOCATES, FOR APPLICANTS.

MR. V.K. ARYA, ADVOCATE, FOR RESPONDENTS.

**(IX) C.P.NO.063/00175/2017 IN
O.A.NO.063/01360/2017**

Sunil Kumar S/o Sh. Devi Ram, age 31 years, R/o Vill. Kando P.O. Bhatgarh, Tehsil Renukaji, Distt. Sirmour, H.P. presently terminated.

.... Petitioner

Versus

1. Lt. Gen. Manoj Mukund Narvani, General Officer Commanding-in-Chief, Head Quarter Army Training Command, Shimla, H.P.
2. Lt. Col. Rakesh, Garrison Engineer, Military Engineer Services, Jutogh Cantt, Distt. Shimla, H.P.

.... Respondents

PRESENT: **MS. SHIKHA CHAUHAN WITH MR. O.P. CHAUHAN,**

ADVOCATES, FOR PETITIONER.

MR. V.K. ARYA, ADVOCATE, FOR RESPONDENTS.

(X) O.A.NO.063/00923/2017

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. This order will dispose of all above captioned Original Applications (OAs)/Contempt Petition, as facts in issue and questions of law are identical, and like-wise is also requested by the learned counsel for the parties. For the facility of reference, facts are taken from O.A. No. 063/00682/2017 titled **SOHAN SINGH @ SOHAN LAL & OTHERS VS. UNION OF INDIA OTHERS.**

2. The applicants have filed this OA under section 19 of the Administrative Tribunals Act, 1985, for quashing the letter dated 7.4.2017 (Annexure A-1) vide which their claim for grant of equal pay for equal work, and regularization of their services, against regular Group D posts in the respondent department, has been rejected and for issuance of a direction to the respondents to regularize their service from the initial date of their appointment as per the Scheme dated 16.8.2012 (Annexure A-2), circulating therewith Government of India, Ministry of Defence, New Delhi, O.M. dated 26.3.2012, based upon decision of Hon'ble Supreme Court of India in the case of Civil Appeal No. 3595-3612/1999 titled **SECRETARY, STATE OF KARNATAKA &**

OTHERS VS. UMA DEVI & OTHERS, decided on 10.4.2016, as according to the applicants, they were appointed through proper selection process against vacant posts and having rendered requisite years of service, and as such, are entitled for regularization as well as well as equal pay for equal work.

3. On the contrary, the stand taken by the respondents is that the applicants were employed on daily wage basis to cater to the additional load of officers / troops and not against any sanctioned vacancy and payment is made on Nerick Rates notified by the State Government

from time to time. They have taken the Preliminary Objection of jurisdiction of this Court over the class of the applicants on the premise that the applicants are paid out of "Regimental Funds" generated by collecting contribution from the officers and such payment is not made from Consolidated Fund of India and as such the applicants are not entitled to invoke the jurisdiction of this Tribunal under section 14 of the Administrative Tribunals Act, 1985. On merit also, they have taken objections, which we would deal with if required, after ascertaining as to whether this Court has jurisdiction to entertain the instant Petitions.

4. The basic arguments in these cases hovered around the issue as to whether the applicants were / are paid their remuneration from the Regimental Fund and the respondents were asked to produce evidence in support of this averment. They filed affidavit and documents also which indeed shows that applicants are paid from the Regimental Funds collected on monthly basis from officers.

5. In view of the above, the preliminary issue, that requires to be thrashed out in these cases is as to whether the persons, who are paid out of Regimental Fund, are entitled to file O.A. under section 19 of Administrative Tribunals Act, 1985, for redressal of their grievance or not?

6. The solitary indicated issue has already been set rest by the coordinate benches of this Tribunal. 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 overruled 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.

11. In the wake of above, all these cases are dismissed being barred by jurisdiction, with the liberty aforesaid. The connected C.P and M.As also stand disposed of. The parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: JANUARY 10, 2019

HC*