

Central Administrative Tribunal
Principal Bench

OA No.1965 of 2003

New Delhi this the 22/9/04 day of September, 2004.

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Mr. M.K.Misra, Member (A)

Ranbir Singh s/o Sh. Indraj Singh,
R/o House of Shri Malcand Pandey,
Behind Municipality Office, Bikaner,
Last employed on the post of
Salesman in the office of Air Fore
Canteen Noida, Distt. Gautam Budh Nagar.

...Applicant

(By Advocate: Shri Deo Deep Sharma proxy for Dr. Sumant Bhardwaj)

-versus-

1. Union of India through
Secretary to the Govt. of India,
Ministry of Defence,
Raksha Bhawan, New Delhi.
2. The Manager,
Air Force Canteen,
Noida, Sector-21,
Distt. Gautam Budh Nagar.
3. The Chief Administrative Officer,
Air Force Station Race Course,
New Delhi.
4. Air Force Commanding,
Air Force Station Race Course,
New Delhi.
5. Officer Incharge
Mr. Mahabir Saunriyal
Sqn. Ldr.
Air Force Station
New Delhi.

....Respondents

(By Advocate: Shri M.K. Bhardwaj proxy for Shri A.K. Bhardwaj)

ORDER

By Mr. M.K. Misra, Member (A)

The applicant, Shri Ranbir Singh, an employee of Canteen under
the Defence Department, made a second journey to this Tribunal



through this O.A. praying for the following reliefs:

“(i) That the impugned order dated 22.11.2002 bearing no. NDS/5051/401/P5-IV and 27.4.2003 bearing no. AFCN/3/1/ORG issued by Directorate of Organization, Air Head Quarters, Vayu Bhavan, New Delhi, dismissing thereby appeal filed by the applicant may be quashed and applicant be allowed all consequential benefits.

(ii) That any other order or direction as may be deemed just, proper and fit in the facts and circumstances of the case may be passed in favour of the applicant in the interest of justice.

2. Brief facts of the case are that the applicant in connivance with his two brothers sold 180 packets of 200g Nascafe to unauthorized person for making illegal gain on account of the difference in canteen price and market price. The forged bills were prepared in a Bradma-I Machine in the name of Lt. Cdr. Amar Singh, who later on, on a testimony in the enquiry denied to have purchased any packets of Nascafe on that date i.e. the date mentioned on the alleged bills. For this misconduct, the applicant was dismissed from service after following the prescribed procedure by the respondents vide impugned order dated 28.2.1997. Against this impugned order, the applicant made the first journey by filing the OA No. 1779/2002 before this Tribunal and the Tribunal directed the applicant first to exhaust all administrative available remedies with a liberty to approach the appropriate forum thereafter, in case of any grievance. The applicant complying with the directions of the Tribunal, filed an appeal before the competent authority and the competent authority, after providing an opportunity to the applicant and after following prescribed procedure, dismissed the appeal of the applicant.

3. The learned counsel for the applicant submitted that no enquiry officer was appointed as required in the Rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out



of non-public fund. These rules were submitted before the Hon'ble Supreme Court in the Contempt Petition filed in the case of **All India Civilian Employees & Ors. Vs. Mr. Yogendra Narain, IAS Defence Secretary & Ors.** (Contempt Petition No. 243-347 of 2001) in compliance of the directions of the Apex court in the case of **Union of India & Ors. vs. Mohd. Aslam & Ors.** (2001) 1 SSC 720.

4. The learned counsel further contended that the applicant was verbally asked to submit his contentions before one Sqn. Leader Shri Raman Kapoor who did not consider the documents submitted by the applicant in his defence. Another submission of the learned counsel is that the Board of Enquiry always consists of more than one member but in this case only one Member Board was constituted which examined the sole witness i.e. the Manager of the Canteen, who himself was the guilty in this case. In other words, there was no independent witness from the department side. It was also submitted on behalf of the applicant that the defence helper was not provided to the applicant nor any document was provided to him, which was used against him i.e. the copy of enquiry report, statement of witnesses, etc. The show cause notice was issued on 11.2.1997 and the enquiry was ordered on 2.1.1997 whereas the respondent stated that the explanation to the show cause notice was given on 12.1.1997 even before issuance of show cause notice and the commencement of the enquiry itself. The learned counsel also took the support of the decision of the Apex Court in the case of **Union of India vs. Mohd. Aslam & Ors.**, (supra) wherein it was held by the Hon'ble Court that the Canteen employees are Central Government Employees. By virtue of being Central Government Employees, the procedure as laid down for termination of the services of the applicant in the CCS (CCA) Rules, 1965 is fully applicable, as averred by the learned counsel.

me

Learned counsel also averred that the Hon'ble Supreme Court vide order dated 29.4.2004 in a Writ Petition (Civil) No. 487 of 1998 in the case of **Dharmanand & Anr. Vs. Union of India & Ors.** held that the rules framed by the respondents regarding terms and conditions of service are illegal and cannot be made applicable to the canteen employees because these rules were framed as if they were not government employees.

5. In nutshell, the averment of the learned counsel for the applicant is that the canteen employees are central government employees and rule 14 of the CCS (CCA) Rules, 1965 are fully applicable and they were not followed by the respondents either in passing the dismissal order by the competent authority or in passing the appellate order by the next competent authority in the case of the applicant. Therefore, both the orders are illegal in nature. Hence, they deserve to be quashed by this Tribunal.

6. Respondents in their reply submitted that there was a misconduct on the part of the applicant inasmuch as the forged bills were prepared in the name of Lt. Cdr. Amar Singh in Bradma-I Machine in connivance of his two brothers, who were also employees of the Canteen. Shri Amar Singh on testimony in the enquiry denied having purchased any packets of Nascafe on the relevant dates. The order of the Tribunal dated 12.7.2002 in OA No. 1779/2002 has been complied with by the respondents by way of providing a proper and appropriate opportunity of being heard to the applicant. Rule 14 of the CCS (CCA) Rules, 1965 is not applicable in the case of the applicant because separate rules framed by the competent authority as per directions of the Apex Court as referred to above in the case of such employees prescribe a procedure for awarding punishment for the misconduct, if any, committed by such

mu

canteen employees and the procedure mentioned therein has fully been complied with. Therefore, the applicant's OA deserves to be dismissed.

7. We have considered the submissions made by the learned counsel for both the parties and also very carefully perused the records and material available therein. In case of **Union of India & Ors. vs. M.Asalam & Ors.**, 2001(1)SCC 720 the Hon'ble supreme Court held that Unit Run Canteen of Army, Navy and Air Force are government servants and they are entitled for benefits of service and pay as per rules but as per their status they would not automatically be entitled to all service benefits available to regular government servants or their counterparts in Canteen Stores Department, Canteens. That would depend upon the nature of their duties, rules, regulations and administrative instructions. The Apex Court also held that the employees of such canteens are not necessarily governed by fundamental rules although the relationship of master and servant exists. However, the employer is at liberty to frame certain conditions of service for them or to adopt the fundamental rules etc.

8. It is also observed that as per the directions of the Apex Court in the above case, the Ministry of Defence framed the rules and submitted the same before the Hon'ble Supreme Court during the course of hearing of a Contempt Petition No. 243-347 of 2001. Rule 21 of such rules explicit the conduct of employee; rule 22 exhibits act of commission/omission constituting misconduct; rule 23 speaks of punishment for misconduct; rule 24 defines procedure for dealing with case of misconduct; rule 25 lays down the procedure for review of the punishment and Schedule-B attached to such rules details the procedure for dismissal/discharge. Schedule-B read with Rule 24 defines the procedure as under:



"24. Procedure for dealing with case of misconduct: Before awarding to an employee any of the punishment in Rule 24, following procedure shall be followed by the disciplinary authority:

- (a) The employee shall be served with a charge sheet, clearly stating the details of misconduct against him and calling upon him to show cause as to why one of more of the punishment(s) included in these Rules should not be awarded to him;
- (b) The reply to the Charge Sheet, if any, shall be duly considered by the disciplinary authority';
- (c) If the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness(es) by him or produce witnesses in his defence. The disciplinary procedure is laid own in Schedule B.

Schedule B

Procedure for dismissal/discharge

The procedure for dismissal/discharge on account of misconduct indiscipline is as follows:

Before the employee is dismissed or discharged from service, following procedure shall be adopted in accordance with the principle of natural justice as applicable from case to case.

- (i) Issuance of charge sheet
- (ii) Appointment of inquiry officer
- (iii) Holding of an inquiry
- (iv) Perusal of the report of inquiry officer by the disciplinary authority
- (v) Issuance of show cause notice
- (vi) Issuance of order of punishment

(b) In the event of the service of a legally qualified person being utilized by the management/establishment to present their case before the Inquiry Officer, the same opportunity must be offered/afforded to the delinquent employee. However, the employee can utilize the services of one of his colleagues to present his case before the Inquiry Officers.]

(c) After considering the inquiry report, if misconduct is established the disciplinary authority shall proceed to take appropriate action. However, the disciplinary authority is not bound to accept the inquiry report but while awarding the punishment,



the authority must state its reasons for not accepting the inquiry report."

9. We also observe that the learned counsel for the applicant submitted a copy of the decision of the Apex Court in Writ Petition (Civil) No. 487/98 in case of **Dhaaramanand & Anr. Vs. Union of India & Ors** passed on 29.4.2004. In the above decision the Hon'ble Supreme Court held as under:

"We are of the view that if these petitioners should have been treated as Government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service that it was only for 5 years tenure and their services were no longer required. We hold that termination was illegal and petitioners are entitled to be re-entitled to get consequential benefits. The petitioners are entitled to get consolidated amount from the date of the termination till the date of judgment in Union of India vs. M.Asalam namely 4th January, 2001, and from that date till reinstatement they shall be paid minimum of the pay scale applicable to their counterpart serving in the CSD Canteen."

10. This decision is distinguishable by virtue of the fact that the services were terminated of such employees on the ground that their services were no longer required because the services were of such employees for five years tenure. The summary termination of such employees was held by the Apex Court as illegal whereas in the case of the applicant, the termination was made on account of misconduct as narrated above and the procedure as laid down in the rules have been followed, inasmuch as the applicant was given charge sheet dated 2.1.1997 and he submitted the reply on 12.1.1997 in response to the said charge sheet. The findings of the enquiry were also supplied to the applicant and the matter was decided only after the reply was received from him. The principle of natural justice was also followed in the case of the applicant, which is the cardinal principle of legal jurisprudence. The

me

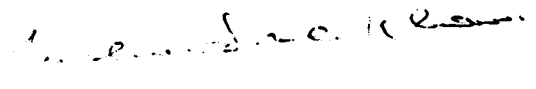
appellate authority also passed the order after the application of its mind and after the applicant was heard.

11. The upshot of the above discussion is that the procedure as laid down in the Rules meant for canteen employees have been followed by the respondents in letter and spirit and we do not observe any lapse on the part of the respondents in passing the dismissal order as well as the appellate order against the applicant.

12. In view of the above discussion, we find no merit in the OA of the applicant and the same deserves to be dismissed, which is accordingly dismissed without any order as to costs.


(M.K.Misra)
Member (A)

/na/


(M.A.Khan)
Vice Chairman (J)