

Central Administrative Tribunal, Principal Bench

26

O.A. No.2954 of 2003

New Delhi this the 9th day of March, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

1. Bachu Ram, Safaiwala, Group 'D'
2. Eric Massey, Clerk, Group 'C'
3. Prem Kumar, Mali, Group 'D'
4. Rajan Yadav, Clerk, Group 'D'
5. Syam Lal, Mali, Group 'D'
6. Ramesh Kumar, Masalchi, Group 'D'
7. Vikram, Safaiwala, Group 'C'
8. Deep Chand, Cook, Group 'C'
9. Vijay Kumar, Waiter, Group 'D'
10. Sanjay Kumar, Waiter, Group 'D'
11. Sanjay Martin, Waiter, Group 'D'
12. Praveen Kumar, Tennis Maker, Group 'D'

13. Patric, Barman, Group 'D'

All the employees of Taurus Officers Institute,
2, The Mall, Delhi Cantt-110 010.

.....Applicants

By Advocate: Shri E.J. Verghese.

Versus

1. The Union of India Through the Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The Chairman,
GOC, Delhi Area,
Delhi Cantt.-110 010.
3. The Honorary Secretary,
Taurus Officers Institute,
2, The Mall,
Delhi Cantt.-110 010.

.....Respondents

By Advocate: Shri Rajiv Bansal, proxy counsel for Shri B.K.
Aggarwal, Counsel.

Maneka

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

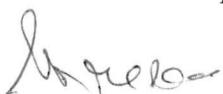
The applicants, 13 in number, have filed the OA for grant of the following relief:-

- (i) to allow the application of the applicants under Section 19 of the Administrative Tribunals Act, 1985 with cost;
- (ii) to direct the respondents to treat the applicants at par with the Central Government employees, by extending the judgment of the Jodhpur Bench of 1999 as modified by the Hon'ble Supreme Court in their judgment dated 4th January, 2001;
- (iii) to direct the respondents to implement the provisions of Clause 39 of the Bye-Laws strictly in favour of the applicants;
- (iv) direct the respondents to deposit the EPF subscription with the Provident Fund Commissioner along with the Employer's Contribution and grant the interest from the date of deduction and inform the balance of provident fund to the applicants periodically/annually;
- (v) direct the respondents to make the payment of gratuity under the Payment of Gratuity Act, 1972 or Gratuity under the provisions of the CCS Pension Rules;
- (vi) direct to increase the pay @Rs.1500/- per month as is granted to the counter-parts of the applicants in Taurus Officers Mess, and subsequently approved by the GOC for the applicants who are similarly and identically situated and under the same administrative control of the GOC Delhi Area with effect from 1.8.2001 and;
- (vii) direct the respondents to continue to pay the Extra Duty Pay to the applicants @ Rs.750/- for performing the duties of the Manager, thus saving more than Rs.5,000/- to the Institute.

2. The factual matrix is as follows. The applicants are working as Clerk, Safaiwala, Mali, Masalchi, Cook, Waiter, Tennis-marker, Barman etc. etc. at the Tauraus Officers Institute. They have alleged that some of them are working in the Institutes for the last 34 years but have never been treated nor have been granted the pay scale and service conditions at par with the civilian employees of the Defence Department, Army Canteen, CSD Canteen or even Delhi Area Officers Mess. It is alleged that Tauraus Officers Institute and Taurus Station Canteen are under the administrative control of the GOC Delhi Area, who is under the Administrative control of the Ministry of Defence. The service condition of the Taurus Station Canteen and Taurus Officers Institute are similar and identical in nature but the service condition of the applicants are not equal to other Civilian Defence Employees. 10 applicants were in occupation of the government allotted accommodation but rent of Rs.200/- per month was deducted from their salary. They also receive bonus. Provident Fund is also deducted from their salary with a

Deo deo

matching contribution from the administration but they are not getting any medical facility. They are also not covered by the Insurance Scheme. They have also not been paid minimum wages and granted gratuity at the time of resignation or retirement. They were also covered by the judgment of the Hon'ble Supreme Court in Union of India and Others Vs. M. Aslam and Others (2001) 1 SCC 720. The applicants are further entitled to receive DA at the same rate at which the Central Government employees are getting besides gratuity, free accommodation and deduction of Provident Fund on the basic pay as determined under Clause 39 of the Rules and Bye-laws of the Institute which the respondent authorities have not complied with. The pay of the staff working in the Taurius Officers Mess has been increased to Rs.1500 per month with effect from 1.8.2001, which increase was not granted to the applicants. Furthermore, the applicants are not different from the employees of the Unit Canteens of the Army Unit and Establishment, their mode of recruitment, appointment, service conditions are identical. They are entitled to equal pay for equal work. The applicants are also identically placed with the Railway Canteen and Canteen of Defence Industrial Establishment. They are always under the threat of termination of their services and vacation of Government accommodation. Three of the applicants were paid Extra Duty Allowance of Rs.750/- each including applicants No.2 and 3 for performing duty of a Manager of the Canteen for 2 months which duty they are still performing, but the extra duty allowed has been stopped. According to these applicants they are eligible to be granted the relief prayed for since they are similarly circumstanced and similarly situated as the Canteen employees of Unit/Establishment and other civilians; they have been denied their legitimate right provided in the Clause 39 of the Bye-Laws of the Institute; they are being discriminated against their own counter-parts under the same administrative control and have been denied minimum wages and status of the Central Government employees; the Institute had sufficient income from different sources as in the case of Unit Run Canteens; the Institute is under the Ministry of Defence and controlled by the Army Officers; it is run by the grant given by the Army Headquarters and the Welfare Fund of the GOC Delhi Area in addition to the funds generated by it and performing a public function similar to the Unit Run Canteen; the applicants are doing work of permanent and perennial nature and are permanent employees of the institute



having rendered more than 31 years of service; the Institute is a part of the Organisation of the Ministry of Defence; denial of the benefit of the order of the Jodhpur Bench of this Tribunal is arbitrary and violative of the natural justice and no-implementation of the Bye-Laws 39 of the Institute and denial of increase in the pay at par with their counterparts who were similarly placed and similarly situated were discriminatory and in violation of Article 14, 16, 21 and 39 (d) of the Constitution of India; the principles of law laid down by the Hon'ble Supreme Court in **Parmal Chandra Raha and Others Vs. Life Insurance Corporation and Others, 1995 Supp. (2) SCC 611** and in the case of **M.M.R. Khan and Others Vs. U.O.I. & Others, W.P. No. 2275-96** of 1982 decided on 27.2.1990 and in the case of **Employees of Canteens of Defence Industrial Establishments reported in 1988 (4) SCC 478** are applicable to the applicants also.

3. The respondents initially filed a short reply and raised a preliminary objection that the applicants were not Government servant so the Tribunal will not have jurisdiction to decide their grievances. It was submitted that Taurus Officers Institute was established in 1945 with a view to provide recreation to the officers and their families residing in Delhi Cantt. Area. The Institute and its employees were governed by Rules and Bye-Laws of the Officers Institute. It is not funded by the Central Government. The source of the income is contribution from the members of the Institute. The membership of the Institute is not compulsory but only optional/voluntary. The Institute does not have fixed composition. At present the Managing Committee of the Institute is headed by General Officer Commanding (GOC). The power to appoint or dismiss any one in the Institute rests with the Managing Committee of the Institute. The applicants are not Defence Civilian employee. The Institute is also not a welfare activity of the Government. It is only a recreation facility made available to the officers in the Delhi Cantt. particularly those who can use it by paying contributions. The applicants are paid out of the contribution received. They cannot be equated with the employees of the Unit Run Canteens, CSD Canteens and Officers Mess. The nature of job, service conditions and eligibility conditions of the employees of the Unit Run Canteens and Taurus Officers Institute are different and there can be no comparison. While the Unit Run Canteens and CSD always earn profits by their functioning, the Institute has no fixed source of income and is largely dependent on the attendance of the members. As regards Officers Mess, it

Moreda

is an obligatory organization which does not take loss/profit into account. Officers Mess is a compulsion. Similar staff in the officers Mess are also not treated as Central Government permanent employee. Other allegations were also denied.

4. After the preliminary objection raised by the respondents in the aforesaid short counter-reply was rejected and the Tribunal held that it had jurisdiction to decide the present OA, the respondents filed a detailed counter-reply in which besides raising identical pleas, other allegations made by the applicants in their OA was controverted.

5. It was submitted that the present membership of the Institute fluctuates between 500 to 600 and the amount collected by way of subscription is in the range of Rs.25,000 to Rs.30, 000 only. The proceeds of party booking is very meagre as booking of Hard Standing and Taurus Room is very sporadic owing to the large number of venues available in and around Delhi Cantt. The Management reserves the right of laying down the percentage of increase in DA and its implementation. Encashment of 15 days leave is allowed and is being done regularly. Some employees have been provided accommodation and nominal amount of Rs.200/- was deducted from their pay for water and electricity charges and not account of rent. The accommodation could not be provided to all the employees as a matter of right. The employees are also permitted to contribute 8.1/4% of their basic pay per month and an equal amount is contributed by the club towards Provident Fund. Employees of Delhi Area Mess were granted increment of pay in the range of Rs.500 to Rs.1500 in tune with the heavy workload and large number of commitments of Delhi Area Officers Mess. It is not the case with the Taurus Officers Institute. Almost, the entire officers work is done by combatants and the waiters are utilized only for serving drinks and snacks to members while catering is done by the civil caterers on all functions and movie days. The applicants have unauthorisedly obtained copies of some documents lying in the Institute and the Managing Committee reserves its right to take action against them. As an interim measure, the ED pay was given to applicants No.2 and 3 to encourage them to take on the responsibilities of the Manager, but they failed to live up to the expectation and the duty of the Manager was entrusted to a Combatant JCO and the ED pay was stopped to those applicants. Efforts are still on to employ a Manager on the recommended pay scale of Rs.7500/-. Other allegations have also been traversed.

Morelos

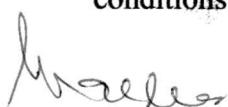
6. In the rejoinder the applicants have reiterated their own case.
7. The Tribunal has disposed of the preliminary objection raised by the respondents that the Tribunal does not have jurisdiction to decide this OA by its order dated 24.8.2004. The Tribunal in para 8 of the order held as under:-

“8. Keeping in view the infrastructure, provisions of funds and management of the Institute, we are of the view that it is in no way different than the Unit-run Canteens. The ratio of the decision of the Jodhpur Bench of this Tribunal as also in the matter of M. Aslam (supra) is squarely applicable to the facts and circumstances of this case. Accordingly, we hold that the principles as applicable to the service conditions of the employees of the Unit-run Canteens are also applicable to the case of the applicants herein. As such, this Tribunal does have jurisdiction over the matter and the objection in this regard raised on behalf of the respondents is rejected”.

8. The Tribunal reached this conclusion after examining the principles of law laid down by the Hon'ble Supreme Court in the case of **U.O.I. Vs. Mohd. Aslam** (Supra) and **Parmal Chandra Raha and Others Vs. Life Insurance Corporation of India** (Supra) and also rules of Delhi Area Officers Institute, Delhi Cantt. The Tribunal has recorded a clear finding that the applicants are similarly placed and similarly situated as are the employees of Unit Run Canteen and the principles of law laid down by the Jodhpur Bench of the Tribunal in its order and the ratio of the case of U.O.I.Vs. Mohd. Aslam (Supra) fully cover the case of the applicants. It was also held that the principles as applicable to the service conditions of the employees of the Unit Run Canteen would also be applicable to the case of the applicants. It is this decision of this Bench in the present proceeding.

9. The Tribunal having rejected the contention of the applicants that it has no jurisdiction to admit the present OA, has held that the applicants are identically circumstanced and placed as the employees of the Unit Run Canteens of the Army. If it is so, the applicants will also be entitled to be considered for grant of pay and other service conditions similar to the employees of the Canteen Staff.

10. In the case of U.O.I. and Others Vs. Mohd. Aslam Khan (Supra), the Hon'ble Supreme Court has observed that the employees serving under the Unit Run Canteen would be treated as Government servants but it was further held that this finding would not necessarily mean that service conditions of such employees are governed by the Fundamental Rules. It was held that it would be open for the employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules. As such the



respondents were required to take a decision about the pay and condition of service of the employees working in the Institute separately or adopt the service rules, which are applicable to other Civilian Army Staff.

11. One of the grievance of the applicants is that as per para 39 Rules and Bye-Laws of the Officers Institute the pay and allowances of the Institute Staff will be decided by the Managing Committee from time to time. As regards DA is concerned, same percentage of DA will be given to the Institute staff as and when the central Government releases DA to the Central Government employees. It has been contended that this rule has not been complied with by the respondent authorities.

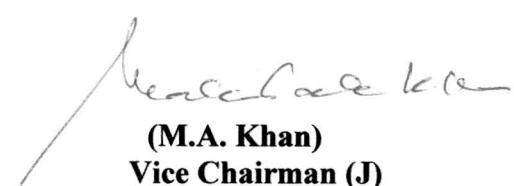
12. The Pay and allowances of the employees of the staff and other service conditions are yet to be settled by the respondent authorities in the light of the judgment of the Hon'ble Supreme Court in U.O.I. and Others Vs. Mohd. Aslam Khan and Others (Supra) and the order of the Jodhpur Bench of this Tribunal referred to in the OA.

13. Having regard to the above discussion, we dispose of the present OA with a direction to the respondents to lay down the service conditions of the employees of the Taurus Officers Institute in which the applicants are working in different capacities and determine their pay and allowances in the light of the order of the Hon'ble Supreme Court aforesaid. This exercise will be carried out by the respondent authorities within a period of 6 months from the date on which a certified copy of the order is received by them. The remaining relief is declined.

No costs.



(N.D. Dayal)
Member (A)



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

Rakesh