

(2005) 05 DEL CK 0078

In the Delhi High Court

Case No : WP (C) 7230, 7231 and 7232 of 2005

J.S. Jamwal and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Citation : (2005) 119 DLT 631

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : J.S. Manhas, for the Appellant; Amit Bansal, for the Respondent

Judgement

Rekha Sharma, J.—The petitioners are ex-army officers. Two of them, namely, Shri J.S. Jamwal and Shri P.N. Ghai retired from the rank of Colonel and Lieutenant Colonel respectively while the third Shri Harjeet Singh retired as a Major. Consequent upon their retirement, they were appointed as Managers of the Unit Run Canteens of the Army on contract basis. It is only the appointment letter of Major Harjeet Singh which has been placed on record. It is dated 22nd March, 2002. It shows that he had been appointed to the post of Manager in the Station Canteen, Gurgaon with effect from 1st April, 2002 on a basic pay of Rs. 5500/- and he shall be on probation for a period of one year which was extendable to two years, if considered appropriate. It further shows that he was required to submit a certificate to the effect that he had read and understood the HQ Delhi Area Standing Orders dated 1st April, 1987 and undertakes to abide by the rules, instructions and duties contained therein during his engagement in the Station Canteen.

2. The HQ Delhi Area Standing Order to which reference has been made in the appointment letter provides that the tenure of the Manager will be on periodic contract basis, i.e., initially for two years and extendable by one year. It further provides that the tenure will not exceed three years and that the contractual period of Canteen Managers will not exceed beyond 58 years of age.

3. It is not in dispute that Shri J.S. Jamwal and Shri P.N. Ghai were also employed on contract basis. The appointment letter of Shri J.S. Jamwal is dated 21st October, 2001 and that of Shri P.N. Ghai is of 20th November, 1997. Their appointments were made under the provisions of Special Western Command Order No.2/S/83, which also stipulated that their employment was on contract basis.

4. The respondents by a letter dated 25th February, 2004 addressed to the Manager Delhi Area Station Canteen, Noida, Faridabad, and Gurgaon stated that the tenure of Canteen Managers for all Delhi Area Station Canteens was restricted to 2 years and that in case of Noida and Faridabad, the tenure was already over and for Gurgaon, it was completing in March 2004. Consequently, the respondent asked for forwarding of names and addresses of suitable candidates in order to make a panel for further appointment to these posts. The petitioners are aggrieved by this communication of the respondents and also by an advertisement appearing in the "Indian Express" dated 15th February, 2004 inviting applications for appointment to the post of Managers in Noida, Faridabad and Gurgaon pursuant to which the recruitment process was put into motion and candidates were interviewed for the purpose.

5. According to the petitioners, notwithstanding, the contractual nature of their appointments, they are government servants, and as such, are entitled to continue as Managers of the Unit Run Canteen, till they attain the age of 60 years which in the case of Shri P.N. Ghai and Shri Harjeet Singh come to an end in September, 2005 and in the case of Shri J.S. Jamwal in February, 2007. In support of their claim, they rely on a judgment of the Supreme Court in the case of Union of India and Others Vs. M. Aslam and Others etc., and also, on the rules called the "Rules Regulating the Terms and Conditions of service of civilian employees of Unit Run Canteen paid out of non-public funds." These rules were framed on 28th April, 2003, but were made applicable with effect from 4th January, 2001.

6. Since it is the judgment of the Supreme Court on which the petitioners have raised the edifice of their case, let us see the context in which the said judgment came to be delivered and its true import.

7. It so happened that the employees of the Unit Run Canteens which provide canteen facilities to the troops at the unit level, filed applications before the Central Administrative Tribunal claiming benefits as regular defense personnel employees or at least as civilians employees serving under the Ministry Of defense, on the allegation, that the Unit Run Canteens are part of the canteen stores departments and since the canteen store departments form a part of the Government in the Ministry Of defense, there is no reason as to why the Unit Run Canteens should not be held to be a part of the Ministry of defense. On behalf of the Union of India, the jurisdiction of the Tribunal was assailed on the ground that these employees cannot be held to be government employees and, consequently, the Tribunal did not have the jurisdiction to entertain the

applications and decide the grievances of the employees. The Tribunal rejected the said objections whereupon the Respondents approached the Supreme Court. The Supreme Court after considering the various aspects of the matter, which we need not go into, held that the status of the employees in the Unit Run Canteens was that of a government employee and, Therefore, for that reason, the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions of the Administrative Tribunal At. The Supreme Court, however, clarified that the status so accorded to the employees would not by itself, ipso facto, entitle them to get all the service benefits, as are available to regular government servants or even their counter-parts serving in the CSD canteens. That, the Supreme Court said, would necessarily depend upon the nature of duties discharged by them, as well as, on the rules and regulations and administrative instructions issued by the employer. The employees however were held entitled to draw minimum of the regular scale of pay available to their counter-parts in CSD canteens and a direction was issued to the Ministry of defense, Union of India, to determine the services of the employees of the Unit Run Canteens at an early date preferably within six months. Pursuant to the direction, the aforementioned Rules dated 28th April, 2003 were framed by the respondents and they met the approval of the Supreme Court.

8. Before we refer to the ratio of the judgment of the Supreme Court and its applicability or other wise to the case of the petitioners as also to the fact, whether the petitioners can be treated as civilian employees in terms of the rules so as to continue in their present post of Managers till the age of 60 years, we may mention that the petitioners on being aggrieved by the issuance of letter dated 25th February, 2004 and the advertisement appearing in the "Indian Express" approached the Central Administrative Tribunal, but without success. That is how they are now before us.

9. It may not be out of place to mention here that we were told, during arguments by learned counsel for the respondents that such appointments on contractual basis like that of the petitioners are actually made to rehabilitate the ex-army personnel as they retire earlier in age than the civilian employees and that as despite contractual employment, they remain entitled to their pensionary and other benefits accruing to them on account of their having rendered services with the armed forces, they cannot, for that reason also, be taken to be in regular employment as government servants. We feel that while examining the merits of the matter, this aspect needs to be kept in mind.

10. Coming now to the judgment of the Supreme Court, we find that it is clear from the same that although the employees of Unit Run Canteens were given the status of a Government servant they were not held entitled to all the benefits which accrue to a government servant, such as, the benefit of age of retirement up to 60 years or the retiral benefits including pension etc. The Supreme Court in fact has taken care to make it clear that the entitlement to such benefits would necessarily depend upon the nature of duties discharged by the employees, as

well as, on the rules and regulations and the administrative instructions issued by the employer. It Therefore, follows from the judgment that every employee by the mere fact of working in a Unit Run Canteen will not be entitled to the benefits which are available to a regular government servant. The only protection which the judgment does afford to such an employee is that he will draw the minimum of regular scale of pay available to their counter-parts in CSD Canteens. Therefore, as regards the rest of the condition of service and benefit of persons like the petitioner, their terms of appointment will have to be seen.

11. It is apparent from what has been noticed above that the appointments of all the three petitioners were purely contractual in nature and they were to be governed, apart from, the conditions laid down in their appointment letters, by HQ Delhi Area Standing Order dated 1st April, 1987 and by Special Western Command Order No. 2/S/83. These two standing orders, it may be recalled, also reiterated that the appointments of the petitioners were contractual in nature and could not exceed more than 3 years under any circumstance. As already noticed above, the judgment of the Supreme Court nowhere says that irrespective of the nature of appointments, the employees of the Unit Run Canteens are entitled to get all the service benefits as is available to regular government servants. It rather says that it would necessarily depend upon the nature of the duties discharged by such employees as well as the rules and regulations and the administrative instructions issued by the employer. The case of the petitioners falls within the ambit of this part of the judgment of the Supreme Court as their appointment was to be governed by the HQ Delhi Area Standing Order and Western Command Order No. 2/S/83 which describe the nature of their appointment as contractual. The petitioners Therefore cannot derive any benefit from the judgment relied upon by them.

12. Let us now have a look at the rules regulating the terms and conditions of the civilian employees in the Unit Run Canteens which were framed pursuant to the judgment of the Supreme Court. It is Rule 27 which provides that an employee of a Unit Run Canteen shall superannuate on attaining the age of 60 years. But this rule does not stand alone. It cannot be read in isolation. It has to be interpreted in conjunction with Rule 3 which runs as under :-

13(a). "These Rules shall apply to all civilian employees of Unit Run Canteens paid out of Non Public Fund Account but shall not apply to any person engaged on daily wages or on casual employment or to those hired on a contractual basis whose conditions of service will be regulated by their appointment letters. These Rules shall also not apply to serving defense personnel who may for the time being be detailed to work therein in any capacity whatsoever in addition to their own duties.

14(b). These Rules will govern the terms and conditions of Unit Run Canteens employees serving in various Unit Run Canteens as on 4th January, 2001 and on subsequent days and will bring forth uniformity on matters governing the terms and conditions of such employees."

15. We feel that a combined reading of Rule 27 and Rule 3 makes it abundantly clear that the benefit of retirement age of 60 years and the retiral benefits shall not apply to any person engaged on daily wages or on casual employment or to those hired on a contractual basis whose conditions of services will be regulated by their appointment letters. We have no manner of doubt that the petitioners fall in this "excepted" category.

16. We may mention that our attention was also drawn to yet another judgment of the Supreme Court passed in WP (Civil) No. 687 of 1998, Dharam Nand and Anr. v. Union of India dated 29th April, 2004. It appears that it was not a case where ex-army officers after their retirement had been given the benefit of fixed contractual tenure. It also does not appear to be concerned with the Rules framed and thus the judgment appears to be distinguishable on facts.

17. In the ultimate analysis, we hold that none of the petitioners are entitled to the benefit of the retirement age of 60 as their appointments were contractual in nature and fell in the "excepted category" of Rule 3 as discussed above. We Therefore find no merit in the petition. However, in view of the facts and circumstances of the case, no order is made as to costs.