

(2001) 01 SC CK 0033

In the Supreme Court Of India

Case No : Civil 1039 and 1040 of 1999 and Civil 1041, 1042 and 1043 of 1999 and 1999

Union of India and Others

APPELLANT

Vs

M. Aslam and Others etc

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Citation : AIR 2001 SC 526 : (2001) AIRSCW 134 : (2001) 88 FLR 759 : (2001) 1 JT 278 : (2001) 1 SCALE 48 : (2001) SCC(L&S) 302 : (2001) 1 SCR 62 : (2001) 1 Supreme 11 : (2001) 1 UPLBEC 620

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Advocate : N.N. Goswami, V.A. Mohta, P.N. Mishra, S.W.A. Qadri, Bipul Kumar, Mrs. Kiran Bhardwaj, M. Vijaya Bhaskar, Mrs. Anil Katiyar, R. Nedumaran, J. Buther, M.A. Chinnaswamy, J.K. Kaushik, Dr. Sumant Bharadwaj, Praveen Chaturvedi, Ratnesh Kumar, Mrs. Mridula Ray Bharadwaj, Smt. Subhadra Chaturvedi, K.N. Rai, for the Appellant;

Final Decision : Dismissed

Judgement

Pattanaik, J.—Union of India is the appellant in all these appeals and these appeals are directed against the orders of different Central Administrative Tribunals. The respondents are the employees of the Unit- Run-Canteens which provide canteen facilities to the troops at the unit level. Applications before the Central Administrative Tribunals were filed by these employees claiming benefits as regular defence personnel employees or at least as civilian employees serving under the Ministry of Defence on the allegation that the Unit-Run- Canteens are part of the Canteen Stores Department and since the Canteen Stores Department forms a part of the Government in the Ministry of Defence there is no reason as to why the Unit-Run-Canteens should not be held to be a part of Ministry of Defence. On behalf of Union of India the jurisdiction of the Tribunal was assailed on the ground that these employees cannot be held to be the Government employees and consequently the Tribunal did not have the

jurisdiction to entertain the applications and decide the grievances of the employees. According to the Union of India the Unit-Run-Canteens are operated by the non-public funds and the expenditure required to run the Unit Canteens is made out of the profits earned by the canteens itself and, therefore, so far as the personnel serving in such canteens, there is no relationship of master and servant between the Government of India and the employees, and consequently the applications before the Tribunal should be rejected. The Central Administrative Tribunal, however, at Jodhpur and Bombay took the view that the Unit-Run-Canteens are the part of Defence establishment and consequently the holder of a post in the management of such canteen must be held to be connected with the Defence Services. The Tribunals examined the relevant provisions made by different personnel providing all pervasive control with the Ministry of Defence and thus held that there subsist master and servant relationship between the employees serving in Unit-Run-Canteens and the Ministry of Defence and, therefore, the Tribunal retains the jurisdiction to entertain applications and decide those applications in accordance with law. Mr. Goswami, learned senior counsel appearing for the Union of India vehemently contended before us, that these Unit-Run-Canteens are different from the Canteen Stores Department and the salary of the employees serving in the Unit-Run-Canteens are not paid out of the Consolidated Fund of India but a fund created at the unit level and profit out of sales in Unit and Canteens are utilised for the payment of salary as well as for creating assets of the canteens, and consequently it is not possible to hold that there exist relationship of master and servant between the employees serving in these canteens and the Union of India in the Ministry of Defence. According to Mr. Goswami, no doubt, some amount of control is vested with the local defence personnel, be it Army, Air Force or Navy, over the employees serving in Unit-Run-Canteens, but conferment of such disciplinary control alone will not clothe the employees with the status of Government servant or servants under the Ministry of Defence and the Tribunal, therefore, committed serious error in declaring the status of these employees as Government servants. Mr. Goswami also strongly relied upon the judgment of this Court in the case of Union of India and Another vs. Chotelal and others AIR1999SC376 , in which case this Court has held that the Dhobis in the National Defence Academy, Khadakwasla are not Government servants, particularly because their salary is not paid out of the Consolidated Fund of India. According to Mr. Goswami, the Administrative Tribunals at Allahabad and Punjab and Haryana High Court at Chandigarh have taken contrary view so far as the status of these Unit-Run-Canteens' employees are concerned, and according to the learned counsel that constitutes a correct view.

2. Mr. Mohta, Mr. P.N. Mishra, senior advocates and several other learned counsel appearing for the respondents, on the other hand contended, that the Central Administrative Tribunals at Jodhpur and Bombay have taken the correct view with regard to the status of such employees. According to them the decision of this Court and the test indicated in the Life Insurance Corporation case would

fully apply to the facts and circumstances of the present case and, as such, there will be no reason to hold that the employees in the Unit-Run-Canteens are not the Government servants.

3. In order to decide whether the employees serving in the Unit-Run-Canteens can be held to be Government servants, it is necessary to find out the mode of appointment of such employees, Rules and Regulations governing the conditions of service of such employees, fund from which such salary is paid, and other factors which really determine the existence of relationship of master and servant between the Government and the employees. In the Defence Services there are two types of canteens; (1) Canteen Stores Department, and (2) Unit-Run-Canteens. The Canteen Stores Department was in existence in this country even during pre-independence days and it has its Head Office and Base Depot in Bombay with 33 Area Depots all over the country. These Area Depots are the wholesale outlets, which serve Unit-Run Canteens in their respective zones. The Canteen Stores Department after the independence from 1948 onwards function as a Department under the Ministry of Defence initially for 3 years on an experimental basis and later from 1950 has been working on permanent basis. We are concerned in the present case with the Unit-Run Canteens and the status of the employees serving therein. As has been stated earlier, these Unit-Run Canteens under their respective Commanding Officers in the three services - Army, Navy and Air Force get their articles from the wholesale outlets in Area Depot of the Canteen Stores Department and at present there exist 3400 Unit-Run Canteens. Prior to the World War II the retail trade in the Defence Services was in the hands of the contractors. During World War II a regular cadre called Indian Canteen Code came to be formed under the Canteen Services (India) to handle retail trade in operational areas where contractors were not expected to go. After 1947, the organisation split into two : Canteen Stores Department (India) and Canteen Stores Department (Pakistan). The retail trade, however, was reverted to the contractors. But by the early fifties it was realised that the margin of profit between the wholesale price and the retail rate could be a welcome source of funds available to commanding officers for welfare purposes. Thus, the concept of unit-run canteens was born, and contractors were driven out. When Major Gen. K.S. Thimaya took over as Quarter Master General, he gave detailed thought to providing canteen facilities to the troops at the unit level. He found that retail outlets being in the hands of the unit canteen contractors, the margin between the wholesale price and retail price of goods went to the contractors whereas the amount in the hands of individual commanding officers of units in the Army, Navy and Air Force could be utilised for the welfare of the troops. The case was therefore, made out jointly for taking over of contractor-run canteens by units or formations, as the case may be, so that the profits from the sale of canteen stores could be retained within the unit. Contractors, no doubt, put up considerable objection to the aforesaid proposal but the Government agreed to the proposal of General Thimaya and orders were issued. The concept of Unit-Run Canteens, therefore, became an accepted

doctrine though it took considerable period for implementing change over. It goes without saying that from 1948 onwards the Canteen(for short `CSD') functioned as a department under the Ministry of Defence, initially for three years on an experimental basis, and later from 1950 on a permanent basis and yet right upto 1977 the legal status of the same remained nebulous. For functional purposes, it was a commercial undertaking, but for actual practice it was treated as a Department of the Ministry of Defence. The result was that the terms and conditions of employees presented various problems which quite often became a source of discontent and unpleasant employer- employee relations. As has been stated earlier, for effective functioning of the defence services it is absolutely necessary to provide canteen facilities through out the country and while the Canteen Stores Department serve as whole sale outlet it is the Unit-Run Canteens which serve as retail outlet. A set of Rules regulating the terms and conditions of service of the employees of Unit-Run canteens have been framed which confers all pervasive control over the employees with the authorities of Defence services. Though the funding of the Unit-Run Canteens is not made out of the Consolidated Fund of India but it is made by the Canteen Stores Department and this Department in its turn has formed a part of the Ministry of Defence, admittedly. In *Chandra Raha and others vs. Life Insurance Corporation of India and others* - 1995 Supp. (2) Supreme Court Cases 611, the employees of different canteens in different offices of the Life Insurance Corporation whether were employees of the Corporation itself was under consideration by this Court. This Court evolved four principles which are quoted hereunder:-

"(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees became a part of the establishment and the workers employed in such canteens are employees of the management.

(ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a canteen, the canteen does not become part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the

contribution made by the management in the form of infrastructure and funds for making the service available etc."

4. Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government servants, when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. Mr. Goswami, the learned senior counsel appearing for the Union of India strongly relied upon the judgment of this Court in *Union of India and Another Vs. Chotelal and Others*, 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 paragraph 802 of Defence Services Regulation. Payment to such dhobis out of the regimental fund and the character of that regimental fund was the determinative factor. But in the case in hand if the Canteen Stores Department forms a part of the Ministry of Defence and if their funds form a part of the Consolidated Fund of India and it is the said Canteen Stores Department which provides fund as well as different article through the retail outlets of Unit-Run Canteens then the employees who discharge the duties of salesmen in such retail outlets must be held to be employees under the Government. The officers of the Defence Services have all pervasive control over the Unit-Run Canteens as well as the employees serving therein. Regular set of Rules have been framed determining the service conditions of the employees in Unit-Run Canteens. The funding of articles are provided by Canteen Stores Department which itself is a part of the Ministry of Defence. The report of a Committee of Subordinate Legislation went into detail the working conditions of the employees engaged in the Unit-Run Canteens and categorically came to the conclusion that these employees are recruited, controlled and supervised by the Rules and Regulations made by the Defence Services although these have been given the name of Executive Instructions. The said Committee came to the conclusion that for all intent and purposes the employees in the Unit-Run Canteens are Government employees and should be treated as such. In the aforesaid premises, we are of the considered opinion that the status of the employees in the Unit-Run Canteens must be held to be that of a government employee and consequently the Central Administrative Tribunal would have the jurisdiction to entertain applications by such employees under the provisions of Administrative Tribunal Act. Civil Appeal Nos. 1039-1040 of 1999 by the Union of India against the order of the Central Administrative Tribunal, Jodhpur Branch in O.A. No. 86 of 1995 accordingly stand dismissed.

5. Civil Appeal No. 1041 of 1999 is Union's appeal against the decision of Central Administrative Tribunal, Jodhpur Branch in O.A. No. 157 of 1993 and OA No. 333

of 1994. By the impugned orders the Tribunal came to hold that it had the jurisdiction to entertain the applications filed by the employees of the Unit-Run Canteens and further directed that those employees are entitled to pay and other benefits similar to the pay and other benefits available to the canteen employees in the CSDI. The Tribunal also further directed that the applicants should get the minimum of the salary presently being paid to their counter-parts in the CSDI and all the benefits of the other service conditions available to the regular Government employees in the CSDI. It also further directed that they should be treated as Government employees from the date of the filing of the applications before the Tribunal. It also directed that they would be entitled to retiral benefits. As already stated, we have come to the conclusion about the status of the employees serving in Unit-Run Canteens to be that of Government servants, but that by itself ipso facto would not entitle them to get all the service benefits as is available to the regular government servant or even their counter parts serving in the CSD Canteens. It would necessarily depend upon the nature of duty discharged by them as well as on the Rules and Regulations and Administrative Instructions issued by the employer. We have come across a set of Administrative Instructions issued by the Competent Authority governing the service conditions of the employees of such Unit-Run Canteens. In this view of the matter, the direction of the Tribunal that the employees of the Unit-Run Canteens should be given all the benefits including the retiral benefits of regular government servants cannot be sustained and we accordingly, set aside that part of the direction. We, however, hold that these employees of the Unit-Run Canteens will draw at the minimum of the regular scale of pay available to their counter parts in the CSDI and, we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-Run Canteens at an early date, preferably within six months from the date of this judgment. This appeal is accordingly disposed of with the aforesaid direction and observation.

6. Civil Appeal Nos. 1042-43 of 1999. These appeals by the Union of India are directed against the order of the Central Administrative Tribunal, Jodhpur Bench in OA No. 231 of 1994, whereunder the Tribunal has directed the Union Government to review the payment of subsistence allowance payable to the employees in the light of the E.F.R. 53 of the Fundamental Rules. Notwithstanding the fact that we have recorded the conclusion that the employees serving under Unit-Run Canteens could be treated as Government servants, but that does not necessarily mean that the service conditions of such employees are governed by the Fundamental Rules. It would be open for the employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules. There is no decision of the employer that Fundamental Rules would be applicable to such employees and in the absence of such decision the Tribunal was not justified to direct that the question of payment of subsistence allowance should be reviewed in accordance with the provisions contained in the Fundamental Rules. In this view of the matter, though we

uphold the jurisdiction of the Tribunal to entertain applications filed by employees serving in Unit-Run Canteens but the impugned direction for reviewing the payment of subsistence allowance in terms of Fundamental Rules cannot be sustained and that part of the direction accordingly stands set aside and Union's appeal to that extent stands allowed.

7. These appeals are disposed of with aforesaid directions and observations.