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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 25.04.2017**

% **W.P.(C) 3543/2017**

RAJ KARAN SINGH AND ORS ..... Petitioners

Through: Dr. Monika Gusain and Mr. Anil Kumar, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC and Mr. Amit Kishore Sinha, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 04.10.2016 passed by the Central Administrative Tribunal (Tribunal) in O.A. No.60/2013 & 459/2013. The Tribunal has rejected the petitioners' Original Application being O.A. No.459/2013, wherein the petitioners had sought a declaration that they are entitled to get the benefits of the replacement scales given in the Revised Pay Rules 2008, issued in pursuance of the 6th Central Pay Commission report with effect from 01.01.2006, and to seek a direction to the respondents to release the same with arrears of pay from 01.01.2006.

2. The petitioners were appointed to maintain the Saving Scheme Deposits (SSD) – a welfare scheme funded through personal contributions made by the troops of the Special Frontier Force (SFF) from their salaries, on running pay scales. During the course of their employment, they were granted increments of scale, promotion, ACP benefits, revised pay scale of the 3rd, 4th, 5th Central Pay Commission benefits as applicable – which the petitioners claimed as akin to GPF. Since some of the petitioners superannuated on completion of the age of 60 years, and they were not released pension, nor granted benefit of the 6th Central Pay Commission, and instead, only an ad-hoc amount of Rs.3,000/- per month was released to them, the petitioners preferred the aforesaid Original Application with the aforesaid claims, and also the grievance that there was no provision for GPF in SSD. The petitioners claimed that they were appointed against posts duly created under authorization of the Cabinet Secretariat after following due process.

3. The claims of the petitioners were opposed by the respondents on the ground that they were not Government employees, and were not appointed by following any Recruitment Rules. The respondents claimed that the petitioners were employees of the SSD Fund. They were not holding civil posts, and, consequently, the Central Civil Services (Pension) Rules, 1972 were not applicable to them. The respondents also claim that the services of the petitioners were not governed by the Central Civil Services (CCA) Rules, or by the Central Civil Services (Conduct) Rules.

4. Thus, the essential issue that arose before the Tribunal was with regard to the status of the petitioners, i.e. whether they were Government

servants, or not.

5. The Tribunal has referred to Rule 2 of the Central Civil Services (Pension) Rules, 1972, which provides that the said Rules shall apply to Government servants appointed on or before 31.12.2003, including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments. The specific exclusion from application of the CCS (Pension) Rules are the following:

(a)	railway servants ;
(b)	persons in casual and daily rated employment ;
(c)	persons paid from contingencies ;
(d)	persons entitled to the benefit of a Contributory Provident Fund ;
(e)	members of the All India Services ;
(f)	persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;
(g)	persons employed on contract except when the contract provides otherwise ; and
(h)	persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

6. Thus, persons in casual and daily rated employment or persons paid from contingencies, amongst others, have been specifically excluded from application of the CCS (Pension) Rules.

7. The Tribunal referred to and relied upon ***Union of India & Another Vs. Chotelal***, 1999 (1) SCC 554, wherein the Supreme Court held that the Dhobis in National Defence Academy were not Government servants because their salaries were not paid out of Consolidated Fund of India. Admittedly, the petitioners were not being paid their salary either from the Consolidated Fund of India, or the Contingent Fund, or Public Accounts Funds.

8. The Tribunal has also referred to the decision of the Supreme Court in ***Parimal Chandra Raha & Ors. vs. Life Insurance Corporation of India & Ors.***, 1995 Supp. (2) SCC 611, wherein the Supreme Court considered the claim of employees of different canteens serving in the offices of the Life Insurance Corporation of India. The principles evolved by the Supreme Court in the said case were as follows:

> *"(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."*

9. The Tribunal notes that in the present case, there are no rules governing the service conditions of the petitioners; there are no Recruitment Rules, and; the recruitment of the petitioners was not made under an advertisement issued inviting applications where people at large were given opportunity of competing and getting selected. Moreover, there was no statutory obligation for running the SSD Fund. The services being performed by the petitioners were not statutory services. SSD Fund is a voluntary contribution made by SFF employees. The mere persuasive control over the petitioners/ employees by the unit officers does not subject the petitioners to rules or statutory obligations of the Government.

10. The Tribunal has also referred to the judgment of the Supreme Court in ***R.R. Pillai (Dead) through L.Rs vs. Commanding Office Hq. SAC (U) & Ors.***, Civil Appeal No.3495/2005 decided on 28.04.2009. In this decision, the earlier decision in ***Union of India & Ors. vs. Mohd. Aslam & Ors.***, Criminal Appeal Nos.1039-1040/1999 – in respect of the employees serving in the Unit Run Canteens (URCs), was disapproved of by the Supreme Court by observing as follows:

"8. In the case of Aslam's case (supra) a Bench of this court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other NonPublic Funds. Further observation regarding supply is not correct. URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong on holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD. Additionally, in Aslam's case (supra) reference was made to Chandra Raha and Ors. V. Life Insurance Corporation of India [1995 Supp (2) SCC 611]. The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State."

11. The Tribunal has observed that the case of the employees of the URCs, which was considered in ***R.R. Pillai*** (supra), was on a stronger footing than the case of the petitioners. On the aforesaid premise, the Tribunal has rejected the claim made by the petitioners and dismissed the Original Application.

12. Learned counsel for the petitioners has not urged before us that the factual position taken note of by the Tribunal is erroneous. The said factual

position is admitted by the petitioners.

13. Learned counsel for the petitioners submits that all the petitioners were not possessed of their appointment letters since their appointments were made several decades ago.

14. The petitioners have placed on record the communication dated 29.03.1966 issued by the Government of India regarding setting up of Compulsory Savings Deposit Fund by the Commandant Establishment 22, which reads as follows:

> " *No.EA/ FF–FA–2/65*
> *GOVERNMENT OF INDIA*
> *CABINET SECRETARIAT*
> *(EMERGENCY AFFAIRS II CELL)*
>
> *New Delhi, the 29th March, 1966.*
>
> *Shri B. N. Mulik,*
> *Director General (Security),*
> *New Delhi*
>
> *Subject :- Setting up of Compulsory Saving Deposit Fund and Regimental Funds by the Commandant, Establishment 22.*
>
> ....
>
> *Sir,*
>
> ***I am directed** to refer to the correspondence resting with the Commandant, Establishment 22's letter No. 2121/ACCTS/TS 22/16 dated the 9th August 1965 on the above subject and **to convey ex-post-facto approval of the President to the setting up by the Commandant Establishment 22 of** (i) Regimental Funds and (ii) **Compulsory Saving Deposit Fund***

from 8.2.1963 and 1.10.1964 respectively. These funds are kept out side of the Public accounts.

2. The Regimental Funds will be maintained in accordance with the provision of (a) Queens Regulations para 1477 (copy enclosed) (b) Defence Service Regulations paras 34 and 820 to 838 (copy enclosed) (c) Special Army Order 19/S/64 (Copy enclosed).

3. ***The compulsory Saving Deposit Fund has been created for the trainees of Establishment 22 on the analogy of the Armed Forces personnel Provident Fund as defined in Special Army Instruction No. 4/S/60 (copy enclosed). This fund will be maintained in accordance with the Rules framed by the Commandant, Establishment 22 in this behalf (copy enclosed).***

4. This issues with the concurrence of the Ministry of Finance (EA) vide their U.O. No.964/DFA(EA)65 dated 4.11.65.

Yours faithfully,

(T.S. Murthy)
Deputy Secretary (E)

Copy to : -

1. Brig. S.S. Uban, Commandant, Estt.22 C/O 56 APO.
2. Shri R.T. Nagrani, Assistant Director, SFF, New Delhi.
3. Shri R. Saran, Director of Accounts, New Delhi.

(T.S. Murthy)
Deputy Secretary"
(emphasis supplied)

15. In the compilation, learned counsel for the petitioners has also placed the appointment letter dated 19.04.1975 of Sh. Jagat Ram Joshi, who is

petitioner No.2 in the present petition. The said appointment letter reads as follows:

“ *Headquarters*
ESTABLISHMENT NO. 22
C / O 56 APO

No. 2127/SSD/Accts *19 Apr 75*

To

Sh. JAGAT RAM JOSHI
C/O Sh DAYA RAM JOSHI
Cantt. Board Office
CHAKRATA

APPOINTMENT

You are hereby appointed as ***a temporary Clerk to maintain SSD Fund Account of*** *this ESTABLISHMENT with effect from 25 Apr 75 for six month.*

2. The following emoluments will be admissible to you during your service in this ESTABLISHMENT : -
(a) Pay Scale 220-10-270

3. Your services may be terminated at any time by this ESTABLISHMENT, without giving any notice. You have no claim whatsoever for your permanency in the organization.

Sd/-

(F J D’ LIMA)
Lt Col
Chief Adm Officer

Krish/

CERTIFICATE OF EMPLOYEE

Certified that I agree with the terms and conditions mentioned above for employment in ESTABLISHMENT No. 22 as a temporary Clerk for six months only.

Dated : - 25 Apr 75 *Signature Sd/-*"

(emphasis supplied)

16. Learned counsel for the petitioners has sought to tender in Court – as part of the compilation, an office order dated 20.05.2005 in respect of appointment of one Sh. Shiv Kumar Sharma S/o Sh. S.S. Sharma, who was appointed as a Junior Accountant in temporary capacity in the SSD Fund Section of SFF at HQ SSF, New Delhi. Learned counsel submits that his appointment was made in the pay scale of Rs.5000–150–8000. This office order has been issued by the Directorate General of Security. Thus, he submits that the petitioners' appointments were also similarly issued, and the petitioners were serving under the Government.

17. Firstly, there is no explanation furnished by the petitioners as to why the said documents were not produced before the Tribunal. Thus, these documents cannot be permitted to be relied upon at this belated stage

18. Secondly, the documents relied upon by the petitioners at this stage do not, in any way, advance the case of the petitioners. A perusal of the communication dated 29.03.1966 itself records that the Regimental Funds and Compulsory Saving Deposit Fund "*are kept out side the Public accounts*". The said funds are required "*to be maintained in accordance*

with the Rules framed by the Commandant, Establishment 22 in this behalf (copy enclosed)". Thus, it is clear that the Compulsory Saving Deposit Fund was not only kept outside the Public Accounts, but also it was governed by the rules framed by the Commandant, and not the rules framed by the Government.

19. The letter dated 19.04.1975, on the face of it, does not refer to any recruitment process that may have been undertaken by the Government. The appointment of petitioner No.2 was made as a temporary Clerk to maintain SSD Fund Account "*of this ESTABLISHMENT*", i.e. ESTABLISHMENT NO.22. This communication also states that the services of the petitioner may be terminated at any time "*by this ESTABLISHMENT, without giving any notice*". It was also clarified that the petitioner shall have no claim whatsoever for his permanency in the organization.

20. Similarly, letter of appointment issued to Mr. H.K. Nathani dated 21.11.1992 was tendered as a part of the compilation. The position appears to be similar in respect of appointment granted to Hari Kishan Nathani, petitioner No.4 in the present petition.

21. The office order dated 20.05.2005 issued in respect of the appointment of Sh. Shiv Kumar Sharma also brings out the fact that his appointment was in a temporary capacity "*in the SSD Fund Section of Special Frontier Force at HQ SFF, New Delhi ... ...*". This communication also clearly states that the post of Junior Accountant is purely temporary "*and does not come under Central Govt*". Hence, he will

not be entitled to the benefits given to the Central Government employees.

22. Learned counsel for the petitioners has also sought to place reliance on a Division Bench judgment of this Court in ***Ex-Servicemen Welfare Union & Another Vs. Union of India & Others***, 228 (2016) DLT 206 (DB). The grievance raised in the said petition was with regard to the fixation of the cut-off date for grant of pension and pensionary benefits to Special Frontier Force "SFF" personnel at par with the Indian Army 'Y' PBORS. This Court held that there was no justification for fixing of the cut-off date for denying pension to the pre-01.01.2009 retirees. This decision is of no avail to the petitioners, for the reason that the petitioners, admittedly, are not a part of the SFF. The petitioners were appointed for the purpose of maintaining the Savings Scheme Deposit (SSD) Fund – a welfare scheme run through personal contribution made by the Troops of SFF. The Troops of SFF, undoubtedly, are Government servants. However, that by itself does not clothe the petitioners with the status of Government servants. The petitioners are not a part of SFF.

23. For all the aforesaid reasons, we find no merit in this petition and dismiss the same.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 25, 2017
B.S. Rohella