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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 3410/2001

New Delhi this the 23rd day of May 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Shri R.S. Rawat
S/o Late Shri K.S. Rawat
R/O C-7/79 Sector V
Rohini
Delhi-110 085. Applicant

(By Shri Joj Chirayat, Advocate)

vs.

1. Union of India
through Secretary
Ministry of Agriculture
Krishi Bhawan
New Delhi-110 001.
2. The General Manager
Delhi Milk Scheme
West Patel Nagar
New Delhi-110 008.
3. The Deputy General Manager
(Administration)
Delhi Milk Scheme
West Patel Nagar
New Delhi-110 008. Respondents

(By Shri S.M. Arif, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Applicant (R.S. Rawat) was working as a Cash Clerk with Delhi Milk Scheme. His duty as a Cash Clerk comprised collection of cash from Delhi Milk Scheme booths on specific routes allotted to him by his officers and thereafter hand over the same to the Cash Section of the Delhi Milk Scheme. From 1.6.1991, the applicant was deployed on Route

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No.49(M). He was served with two articles of charge pertaining to the alleged dereliction of duty which read:-

"CHARGE-I"

That the said Shri R.S.Rawat while functioning as Cash Clerk and deputed for cash collection duty on Route No.49(M) and 27(E) respectively during the period from Jan., 1991 to Dec.1991 is alleged to have not collected the sale proceeds of milk depots through milk van.

He is thus charged with disobeying the official order with malafide intention which act is highly unbecoming of a Govt.servant and in contravention of Rule 3 of CSS (Conduct) Rules, 1964.

CHARGE-II

That the said Shri R.S.Rawat while functioning as Cash Clerk and deputed for cash collection of sale proceeds of milk booths of Route No.49(M) and 27(E) respectively during the period from Jan., 1991 to Dec.1991 is alleged to have collected the sale proceeds under his charge to the tune of Rs.94,520.00(Rupees ninety four thousand five hundred twenty only) which he has neither deposited nor reconciled which is still outstanding against him as per D.M.S. records which act shows dishonesty and doubtful integrity which is highly unbecoming of a Govt.servant and in contravention of Rule 3 of CCS (Conduct) Rules, 1964."

The inquiry officer had returned the findings that the charges were partly proved. However, the disciplinary authority differed with the same and recorded the grounds of disagreement stating that regarding the amount of Rs.2745/-, the applicant had himself admitted that the same was outstanding against him during the course of enquiry. The reply of the applicant was considered. Thereupon the disciplinary authority holding the applicant to

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have derelicted in his duty and the charges, too having been proved imposed a penalty of dismissal from service upon him.

2. While the applicant preferred an application seeking quashing of the order of the disciplinary authority dated 20.6.2000, he had also preferred an appeal. However, it was disputed during the pendency of the present application that the appeal has also been dismissed. It is in this back-drop that we deem it appropriate to hear the present application.

3. The application has been contested.

4. The learned counsel for the applicant in the first instance contended that there has been an inordinate delay in proceeding against the applicant because according to the applicant, the alleged dereliction of duty took place in the year 1991-92 while the charge-sheet was served only in December 1998. According to the learned counsel thus keeping in view the inordinate delay, the penalty imposed should be quashed.

5. The learned counsel strongly relied upon a decision of the Supreme Court in the case of **The State of Madhya Pradesh v. Bani Singh and another**, AIR 1990 SC 1308. That was a case where there was

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inordinate delay. The Supreme Court held:-

"The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977, there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

Indeed this was not disputed at either end, but as referred to in the case of Bani Singh (supra), if there is satisfactory explanation for inordinate delay, in that event, it would not be a good ground for quashing the disciplinary proceedings. Furthermore, whenever there is delay, it has to be examined as to if any prejudice is caused to the applicant in this regard or not. If no prejudice is caused, in that event, every case where there may be delay need not be quashed.

6. In the present case in hand, it has been explained that for four years there were no disciplinary proceedings and action could not be initiated. In other words, there is a satisfactory explanation which is forthcoming. Once the said

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period is excluded, it cannot be held that there is any inordinate delay in this regard. Some delay is inherent and in the present case even no prejudice is alleged to have been shown in this regard. Consequently, this particular argument being without merit must fail.

7. Confronted with that position, the argument advanced was that the note of disagreement necessarily should be quashed because it does not give just and sufficient grounds.

8. At the outset, we think it necessary to take note of the fact that it is for the disciplinary authority to go into these controversies. The disciplinary authority has a right to differ from the inquiry officer. In accordance with the principles of natural justice, he must convey his note of disagreement spelling out the reasons. The explanation in this regard can be called. A copy of the note of disagreement is on the record. It clearly spells out the reasons as to why the disciplinary authority felt it necessary to take a different view. It takes a tentative decision in this regard. Therefore, the very basis of the argument on that count must fail.

9. Regarding the first article of charge, the assertion made was that the applicant did not travel in the milk van for the collection of cash.

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He travelled by public bus and even ignored the standing orders on that count. Even a feeble attempt had been made to contend that no such standing orders had been placed on the record. Even if it be so, the argument necessarily has to fail. During the course of the enquiry, in answer to the articles of charge and even to the note of disagreement, this fact had not been disputed that as per the instructions, the applicant was supposed to travel in the milk van for the collection. It is, therefore, improper and too late in the date to raise such an argument.

10. As regards the second article of charge pertaining to an amount of Rs.91,775/-, the applicant had himself lodged an First Information Report about his having been deprived of the said amount. As regards, the other amount of Rs.2,745/-, the disciplinary authority recorded that the applicant had admitted that this amount was outstanding against him during the course of inquiry proceedings.

11. In reply to the notice pertaining to said amount of Rs.2,745/-, the applicant had contended:-

..... "That Charge No.2 is also totally wrong and baseless, that I have not deposited the sale income from January, 1991 to December, 1991. In this regard, it is submitted that the sale income which has been shown as Rs.2745.00 from January to December, 91 is money which is the unreconciliation. I had never been served any memo in this regard, asking me to deposit the same. If I would

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had received any memo/order in this regard, then I would have been deposited this amount. Such type of unreconciliation of amounts have been shown on most cash clerks, list of which is enclosed herewith but action has not been taken upon any one. Then why I have been issued the charge sheet. It appears from it that I am being harassed intentionally."

This clearly reveals that there is no specific denial that the amount of Rs.2,745/- was not due. On propensity of probabilities, even such a conclusion can easily be arrived ^{at} regarding the substantial amount for which an First Information Report had been lodged. The findings are clear that the applicant violated the standing orders for collection of cash and this has resulted in loss to the Government and thus the disciplinary authority found this to be a misconduct. We have already held above that this was a violation of the instructions. Therefore, it cannot be termed that the findings recorded are erroneous, based on no material to prompt us to interfere.

17. Resultantly, the application being without merit must fail and is accordingly dismissed. No costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

/sns/

S. Aggarwal

(V.S. Aggarwal)
Chairman