

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2639/97

Decided on: 22.12.1998

Shri Harish Chander.....Applicant

(By Shri T.C. Aggarwal.....Advocate)

Versus

UOI & Anr.Respondent(s)

(By Shri V.S.R. Krishna.....Advocate)

CORAM:

THE HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal? *x*

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(K. MUTHUKUMAR)
MEMBER (A)

(13A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2639 of 1997

New Delhi this the 22nd day of December, 1998

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Harish Chander
S/o Shri Banwari Lal
R/o Village Asanda
P.O. Sapla,
District Rohtak.

..Applicant

By Advocate Shri T.C. Aggarwal.

Versus

Union of India through

1. Secretary to G/I,
Department of Animal Husbandry &
Dairying (Ministry of Agriculture),
Krishi Bhawan,
New Delhi-110 001.

2. General Manager,
Delhi Milk Scheme,
West Patel Nagar,
Delhi-110 008.

..Respondents

By Advocate Shri V.S.R. Krishna

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved over the impugned orders passed by the disciplinary authority imposing the penalty of compulsory retirement from service. On his appeal against this order having failed, the applicant filed revision petition under Rule 29 of the CCS (CCA) Rules, 1965. The revisional authority, namely, the President decided that there was no reason to interfere with the penalty imposed by the disciplinary authority and confirmed by the appellate authority.

2. The charge against the applicant in the disciplinary proceedings was that while functioning as a Mate in the Delhi Milk Scheme and posted on milk distribution on Route No.24(E), Van N-185 on 17.11.1984 along with other van staff, i.e., one Shri Mukhtiar Singh, Heavy Vehicle Driver, Shri Chatter Singh and Shri Birender Singh, Mates attempted to short deposit 120 empty milk bottles in the Central Dairy knowing fully well that the 120 empty milk bottles were in fact short. On this attempt having been foiled by the Tally Clerk on duty, the shortage is stated to have been detected and he was, therefore, charged with having attempted to short deposit 120 empty bottles for illegal pecuniary gain in connivance with other staff employed with him. Accordingly, he was charged with lack of integrity which was grossly unbecoming of a Government servant in violation of Rule 3 of the CCS (Conduct) Rules, 1964.

3. Applicant contends that he was not responsible for any misconduct. According to the prescribed service conditions, he was deployed to work inside the van and was responsible for the accuracy and correctness of the crates. In this case the Mate Shri Chatter Singh along with Driver Shri Mukhtiar Singh was responsible for the same. The other ground taken by the applicant is that the Inquiry Officer had not conducted the enquiry as per the procedure laid down and the failure to follow the procedure had vitiated the enquiry. The applicant further contends that in the enquiry some photostat documents were produced which are of no evidentiary value. The appellate authority had not passed a reasoned and speaking order and the request for personal hearing was also not granted. The other ground taken by the applicant is that

in respect of the same charge, the other Mate, namely, Shri Chatter Singh who was primary responsible for the counting of the bottles, a penalty of reduction of his pay has been imposed whereas in his case, though he was responsible to only lift the crates, he has been compulsorily retired and, therefore, the respondents have acted in a discriminatory manner against the applicant in the matter of imposing the punishment.

4. Respondents in their counter-reply have denied that the enquiry had been vitiated in any manner. They have stated that the Inquiry Officer gave all opportunities to the applicant to adduce his defence and also proceeded with the enquiry in accordance with the rules. The disciplinary authority had applied his mind carefully before imposing this punishment which was also upheld by the appellate and revisional authorities. The respondents aver that according to the Office Order dated 2.11.1979 the Heavy Vehicle Driver is responsible for the number of crates loaded in the van but the number of bottles put in each crate is the responsibility of the Mates and, therefore, the disciplinary authority had rightly imposed the punishment on all the staff of the van including the applicant. In regard to the lesser penalty of reduction of pay for a period of 10 years on one of the Mates, Shri Chatter Singh, the respondents have stated that the Inquiry Officer had not proved the charges against him and the appellate authority after applying his mind and taking into account the other facts and circumstances of the case, set aside the penalty of compulsory retirement to that of reduction of pay to the minimum of the scale for a period

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✓ of 10 years. The respondents also assert that the applicant had never raised any objection regarding any denial of opportunity during the enquiry. They have also denied that the Inquiry Officer had conducted the enquiry on the basis of the photostat copies of the documents which were, however, given to the applicant. In the light of this, the respondents aver that the disciplinary proceedings had not been vitiated at all and the Inquiry Officer had returned the finding that the charge against the applicant was proved. In the circumstances, they assert that there was no illegality in the impugned orders of punishment.

5. We have heard the learned counsel for the parties and have also perused the record.

6. The learned counsel strenuously argued that in the disciplinary proceedings on the same charges, while Shri Chatter Singh one of the Mates was let off with a reduced penalty by the appellate authority, the applicant had been imposed the punishment of compulsory retirement. The learned counsel argued that this was totally discriminatory. On a perusal of the record, it is seen that the respondents have asserted that in the case of Chatter Singh, the other Mate, the Inquiry Officer had not specifically proved the charges against Chatter Singh and the penalty was reduced from compulsory retirement to that of reduction in pay for a period of 10 years vide order dated 5.1.1991. We have seen this order. It is seen that the appellate authority had concluded that the Inquiry Officer had not properly examined the circumstances and observed that the disciplinary

authority had not agreed with the findings of the Inquiry Officer and concluded that the circumstances under which loading and unloading operation was done at the depot, were not properly examined and the possibility of the involvement of the appellant Shri Chatter Singh could not be ruled out and he was imposed the penalty of compulsory retirement, but the appellate authority had held that there was some mitigating circumstances in his case and, therefore, reduced the penalty to that of reduction of pay in the minimum of scale for a period of 10 years. We are of the considered view that it would not be appropriate for the Courts/Tribunals to examine the matter on the basis of its own evaluation of the evidence or sit in judgment on the correctness of the above decision.

7. In the case of the applicant, however, the appellate authority confirmed the order. In a reasoned and speaking order, the revisional authority had observed as follows:-

"3. The President also found that the accused Shri Harish Chander was well aware of the fact that 120 empty bottles were missing right from the stage of loading of empties in the van. He however neither reported the matter to the security at the gate of DMS nor brought this to the notice of the Tally Clerk at the time of unloading of empties at the dock. His silence indicated his involvement in the conspiracy/connivance to deprive DMS of the value of 120 empty bottles thus raising doubts about his integrity. His contentions that he was not given personal hearing by the Appellate Authority, that he was not given sufficient opportunity to defend his case and that the inquiry officer did not consider certain aspects of the case, are all found to be baseless and not supported by the facts of record. Further the flaw of the Appellate Authority not having passed a speaking order does not reduce the gravity of the offence.

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4. As regards Shri Harish Chander's contention that the punishment imposed on him is inconsistent with the gravity of the charge, the President has concluded that in view of the charge of connivance with others to attain illegal pecuniary advantage of one-self, having been proved, the penalty imposed on Shri Harish Chander of compulsory retirement from service is adequate and not severe. Accordingly, the President has decided that there is no reason to interfere with the penalty imposed on Shri Harish Chander by the Disciplinary Authority and confirmed by the Appellate Authority".

8. In the light of this, we are unable to conclude that there had been a wilful discrimination against the applicant in the matter of imposition of penalty. The learned counsel relied on **Dalbir Singh Vs. Director General, CRPF, New Delhi, 1987 (Supp) SCC 466**, to contend that just as in the case of the other Mate, the applicant also deserves to be given a lesser punishment. We are of the view that this decision of the Apex Court was in relation to the particular facts of that case. In fact, their Lordships had clearly observed that their order in this case was not to be treated as precedent and, therefore, this case is not of any help. The learned counsel then referred to **Bejoy Gopal Mukerjee Vs. Union of India and Others, 1989 (1) ATC 369** to contend that when there was no violation of rules by the applicant, there was no misconduct. In the instant case, the respondents have relied on the departmental instructions governed by the Office Order dated 2.11.1979 which fixes the responsibility of Mates in the matter of accountability of the empty bottles to be returned to the Central Dairy. It is only in accordance with this Office Order that the applicant had been charged with having committed the misconduct and had been charged with attempting to the short deposit 120 empty bottles. Therefore, the decision in the instant case is of

no assistance. The learned counsel has also referred to the decision **K. Kannan Vs. Union of India & Others, 1991 (18) ATC 560** to contend that the applicant was not allowed to cross-examine the witnesses. From the enquiry proceedings, we find that the applicant had given his statement of defence and had also participated in the enquiry, through the defence assistant who had also argued in this case. There is no evidence on record to suggest that the applicant or his defence assistant had been denied the opportunity to cross-examine the witnesses. It is also stated in the report that no witnesses were presented by the applicant in his defence and that he had submitted a written statement also with the Inquiry Officer. In the light of this, the aforesaid decision is also not relevant.

9. In disciplinary proceedings, Courts and Tribunals cannot reappraise the evidence. It is settled law that Courts and Tribunals have no jurisdiction to look into the truth of the charges or to the correctness of the findings recorded by the Inquiry Officer or Disciplinary or Appellate Authorities as the case may be. Judicial review is restricted only to seeing that the decision making process is not vitiated in any manner as observed by the Apex Court in **U.O.I. Vs. Upendra Singh, JT 1994(1) SC 658**. The Apex Court has also observed in **H.B. Gandhi, Excise and Taxation Officer Vs. Gopinath & Others, 1992 (Supp) SCC 312**, it will be erroneous to think that the Courts sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself. Courts/Tribunals can interfere in a disciplinary case when

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the decision making process is vitiated or the findings of the Inquiry Officer are perverse and based on no evidence. In the facts and circumstances of the case, we are unable to conclude so.

10. In the conspectus of the above discussion, we are of the view that there are no grounds to interfere with the impugned orders of punishment. In the circumstances, the application fails and is accordingly dismissed. No order as to costs.



(K.M. AGARWAL)
CHAIRMAN



(K. MUTHUKUMAR)
MEMBER (A)

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