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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2857/97

New Delhi this the 13th day of March, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman  
Hon'ble Mrs. Shanta Shastray, Member (Admnv)

Shri Vijay Shankar Shukla,  
S/o late Shri Nanku Ram Shukla,  
R/o RZ-34/223, J Block,  
Sagarpur West,  
New Delhi-110 046.

...Applicant

(By Advocate Shri Gurmeet Singh, through proxy counsel  
Shri T.D. Yadav, alongwith applicant in person)

-Versus-

1. The General Manager,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi.

2. Union of India through  
Secretary, Department of  
Dairying & A.H.,  
Ministry of Agriculture,  
Krishi Bhawan,  
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna, though none appeared)

O R D E R (ORAL)

By Reddy, J.:-

Applicant appears in person and Shri T.D. Yadav, proxy counsel appears for the applicant. None appears for the respondents either in person or through counsel.

2. The proxy counsel appears only for the purpose of stating that the Advocates are abstaining from the Courts and to request adjournment. As we find that the said ground is not tenable, the request for adjournment is rejected. Since the matter is of 1997 and expedited at the request of the applicant, we proceed to dispose of the case on merits.

3. The applicant challenges the order of the compulsory retirement dated 31.5.97 awarded by the disciplinary authority, which has been confirmed by the

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appellate authority, in its order dated 12.11.97. The facts of the case are as under.

3.1 The applicant while working as a Heavy Vehicle Driver (HVD) in the office of the General Manager, Delhi Milk Scheme, was alleged to have pilfered 351 filled milk poly packs of one liter each and 12 empty crates, against the scheduled quantity in collusion with three other employees (Mates). He is also alleged to have refused the recovery memo dated 13.8.93. He is also alleged to have misbehaved and manhandled with the other Government servants on duty. With the above three charges the charge memo dated 6.9.94 was issued, under Rule 14 of the CCS (CCA) Rules, 1965, as having violated the discipline and Rule 3 of the CCS (Conduct) Rules, 1964. As the applicant had denied the charge, an enquiry officer was appointed to conduct the enquiry against the applicant as well as against S/Shri Raj Nath, Hari Dass and Kanchit, Mates. The enquiry officer conducted the enquiry into the charges and submitted his report dated 8.4.96 holding that the charges 1 and 2 are proved against the applicant while charges No.1, 2 and 3 are proved against the three Mates. The disciplinary authority supplied a copy of the enquiry report to the applicant on 30.11.96 to submit his representation against the same. Accordingly the applicant has submitted his representation dated 16.12.96 wherein he again denied the charges and disputed the adverse findings arrived at by the enquiry officer. The disciplinary authority, after considering the findings of the enquiry officer and the evidence on record as well as the representation made by the applicant, found that the



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applicant was guilty of all the charges. Accordingly, he passed the impugned order imposing the penalty of compulsory retirement from service, by his order dated 31.5.97. The applicant submitted his appeal against the above order and the appellate authority, Joint Secretary to the Government of India, considered all the points raised by him in the appeal but, however, dismissed the appeal by order dated 12.11.97.

4. Since we are not assisted by the learned counsel on either side, we have very carefully gone through the pleadings.

5. It is urged in the OA that there is no evidence on record to substantiate the allegations in the charge that the applicant had deliberately attempted to pilfer the milk poly packs and that the burden of proof being on the prosecution the same was wrongly shifted on the applicant. It is also urged that as the disciplinary authority having disagreed with the finding of the enquiry officer on charge No.3 ought to have issued a show cause notice against the reasons for disagreement. In the absence of the same, the enquiry has to be held as vitated.

6. We have perused the enquiry officer's report dated 8.4.96. The report comprises of elaborate marshalling of the evidence and discussion of the same. He has examined several witnesses and came to the conclusion that the applicant was guilty of the charges 1 and 2 only. The charges 1, 2 and 3 were proved against the three Mates. Thus the applicant was found not guilty of charge no.3. But the disciplinary authority in the impugned order has



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wrongly stated that the enquiry officer had submitted his report holding that all the charges against the applicant have been proved.

7. The main contention of the applicant appears to be that the applicant was not asked to explain as to the reasons of disagreement regarding charge No.3 by the disciplinary authority. Hence, the enquiry is vitiated. This contention appears to be having some force. No separate order of disagreement as regards the third charge has been recorded by the disciplinary authority. Hence, the same was not asked to be explained by the applicant. In fact, the disciplinary authority has taken that the enquiry officer had found the applicant guilty of the third charge also. That is why the disciplinary authority had supplied the applicant only with the enquiry report. In the impugned order the disciplinary authority has stated that the applicant abused and manhandled the security staff on duty. On the basis of the conclusions that the applicant was guilty of all the charges including the third charge, the impugned order, imposing the penalty of compulsory retirement, has been awarded to the applicant. If he were to be found not guilty of third charge, it cannot be said with certainty that the disciplinary authority <sup>would have</sup> ~~has~~ awarded the same punishment. In our view, the action of the disciplinary authority in awarding the punishment of compulsory retirement mainly on the basis of the finding that the applicant was guilty of the third charge, without giving an opportunity to the applicant to explain the reasons for disagreement by the disciplinary authority with the enquiry officer's findings, clearly vitiated the enquiry. We are supported in our view by the



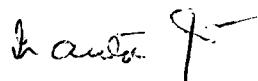
judgement of the Supreme Court in Punjab National Bank & Others v. Kuni Bihari Mishra, 1998 (7) SCC 84. In the order of the appellate authority it is also clear that a clear objection has been taken by the applicant that the disciplinary authority did not express any opinion regarding the punishment on the third charge, while serving the show cause notice and this contention was not properly dealt with by the appellate authority.

6. In view of the aforesaid discussion the impugned orders of the disciplinary authority as well as the appellate authority are liable to be quashed and they are accordingly quashed. The respondents are directed to reinstate the applicant in service as HVD. However, it is open to the respondents to keep the applicant under suspension, as he was already under suspension prior to the impugned order of the disciplinary authority. We direct the respondents to conduct the enquiry afresh from the stage of recording reasons for disagreement with the enquiry officer's finding on the third charge and supplying the reasons for disagreement to the applicant for his explanation and thereafter consider the explanation given by the applicant alongwith his explanation to the enquiry officer's report and pass final order, as per law, after hearing the applicant. If the applicant is aggrieved by the said order and an appeal is filed, the appellate authority should also afford an opportunity of hearing to the applicant while considering the appeal.



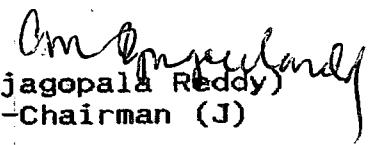


7. The OA is, accordingly allowed. This part of enquiry shall be completed and the disciplinary authority shall pass final order within three months from the date of receipt of a copy of this order. We do not, however, order costs in the case.



(Smt. Shanta Shastry)  
Member (Admnv.)

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(V. Rajagopala Reddy)  
Vice-Chairman (J)