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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OAs 1909/88, 962, 1127 & 1129/89

NEW DELHI, THIS 2nd DAY OF AUGUST, 1994.

Shri N.V.Krishnan. Vice-Chairman(A)
Shri C.J.Roy, Member(J)

Shri Pritam Singh
s/o Shri Raghbir Singh
102, Fatakwali Gali
Khureji Khas
Patparganj, Delhi .. Applicant in OA 1909/88

Shri Giani Ram
s/o Shri Chandgi Ram
Village Baleli
PO Dadhi Adampur
Teh. Charkh Dadari .. Applicant in OA 962/89
Dt. Bhiwani (Haryana)

Shri Kura Singh
s/o Shri Bela Ram
Village Jahangirpur .. Applicant in OA 1127/89
Dt. Meerut (UP)

Shri Sat Bhushan
s/o Shri R.S. Sharma
House No.WZ567, Naraina28..Applicant in OA 1129/89
Village, N. Delhi-110 028

All by Advocate Shri S.N. Shukla

versus

Union of India, through

1. Secretary
Deptt. of Agriculture & Cooperation
Krishi Bhawan, New Delhi
2. General Manager
Delhi Milk Scheme
West Patel Nagar, New Delhi-110 008 .. Respondents
By Advocate Shri M.K. Gupta

ORDER

(BY HON'BLE MEMBER(J) SHRI C.J. ROY)

These four cases arise out of same cause of action and since the relief claimed is based on the same and common incident, we propose to dispose of these cases by a common order. The documents referred to are from OA 962/89. English versions of the documents in Hindi are kept on record.

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2. The applicants are aggrieved by the order dated 15.5.87 (Annexure A-3) imposing penalty of compulsory retirement from service upon them and also the order dated 25.8.88 (Annexure A-5) by which the above penalty was confirmed by the appellate authority. The applicants were originally appointed as Badli Workers on the post of Mates under Respondent No.2 and they were brought on to regular establishment as Mates, separately on different dates, during the years between 1978 and 1983. They were served with a charge-sheet (Annexure A-1) alleging that on 13.5.86, the applicants sold forty half-filled milk bottles unauthorisedly in connivance with each other. They denied the charge. An enquiry was conducted and on receipt of the report dated 25.4.87 of the Enquiry Officer (Annexure A-2), the impugned order dated 15.5.87 was passed by the disciplinary authority. The applicants preferred an appeal on 3.6.87 but the same was rejected by the second impugned order dated 25.8.88. Hence these applications, inter alia, with a prayer for quashing both the impugned orders.

3. The respondents have filed separate counters for each OA justifying the imposition of penalty and ultimate rejection of the appeals preferred by the applicants. The respondents have denied all the above averments. Their case is that the findings of the Enquiry Officer were entirely based on the evidence recorded during the course of enquiry proceedings and that there was no violation of Article 311(2) of the Constitution of India as all reasonable opportunities were given to the applicants to defend their case and as such there was again no violation of CGSA (CCA) Rules, 1965 and principles of natural justice. They contend that the enquiry

was conducted as per Rules on the subject, the applicants were supplied with the copies of the documents relied upon and they were given opportunity to give the names of the defence witnesses, vide letter dated 7.2.87, which they had failed to do so. Therefore, their contentions are that both the impugned orders passed against the applicants are speaking orders.

The grounds on which the applicants have assailed the impugned orders are as follows. The Enquiry Officer did not allow them to inspect the documents and did not pass order under sub-rule (11) of Rule 14 of the CCS(CA) Rules, 1965, inasmuch as that they were deprived of the reasonable opportunity to defend themselves thus violating Article 311(2) of the Constitution of India and principles of natural justice. Further the applicants were not allowed to produce witness to defend themselves. They contend that the evidence

of the two prosecution witnesses were not recorded by the disciplinary authority in their presence but the witnesses simply recognised their signatures and said nothing. Neither the enquiry officer gave his findings on the basis of evidence adduced during the enquiry nor the disciplinary authority passed the punishment order on the basis of the evidence. The Enquiry Officer, disciplinary authority and the appellate authority relied only on the confessional statements of a person who was not an employee of the respondents and who was not produced for cross examination by the applicants. Therefore, the evidence of the two witnesses examined on behalf of the disciplinary authority can not be relied upon as their evidence was not recorded in the presence of the applicants. Also the impugned orders are non-speaking inasmuch as that they did not give reasons as to

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why there was shortage of milk and the same would have been made good either by adulterating milk with water or short delivery of milk. Therefore, their contention is that both the impugned orders passed against them are not only non-speaking but also liable to be quashed.

5. The applicants have also filed their rejoinder more or less asserting the same points.

6. We have heard the counsel for the parties and perused the English translations of the depositions.

7. With reference to the first contention that the applicants were not given opportunity to inspect the documents, we have seen the depositions given to us in English translation. Nowhere we found that the applicants have demanded inspection of records which were not allowed.

In their written statement, the respondents deny in para 4.3 that the enquiry was not conducted in accordance with the provision contained in Article 311(2) of the Constitution of India and that all the relevant provisions of CCS(CA) Rules were followed by affording reasonable opportunity and principles of natural justice were not violated in any manner.

8. In para 4.6 of the reply, the respondents categorically state that on 7.2.87 photocopies of listed documents were given to the charged officials who were present and they were also informed that if they wish to apply for any documents they could ask for the same. Since Shri Giani Ram (applicant in OA/962/89) was absent on 7.2.87, copy of the Enquiry Officer's order dated 7.2.87 alongwith

photocopies of the listed documents were sent ^{to} at his residential address by Regd. AD post duly acknowledged by him on 13.2.87. All the applicants later on participated in the enquiry. Therefore the contention of the applicants that they were not given documents and that the respondents have violated the provisions of Article 311(2) of the Constitution of India and CCS(CCA) Rules in not giving them the listed documents has not been made out. Therefore, their contentions are negatived. During the course of the arguments, this ground is not pressed.

9. With reference to the second contention raised by the applicants that the defence witnesses were not allowed to be examined, the respondents reply in 4.7 that opportunity was given to the charged officials to give names of the defence witnesses by way of order dated 7.2.87 but no list was produced by the applicants. In the English translation of the depositions, nowhere we found that the charged officials made any request for the examination of the defence witnesses, as already stated. Hence the contention that the applicants were denied opportunity to examine the defence witnesses is also not based on record.

10. From the record, it is clear that the alleged event took place as narrated by the charge-memo issued which reads

as follows:

"That the said S/Sh. Kure Singh, Mate (on driving duty), Gyani Ram, Pritam Singh and Sat Bhushan, Mates while functioning on Route No.37(D) on 13.5.1986 for distribution of milk, delivered 2 crates containing 40 toned milk filled bottles to one Sh. Ravinder against cash payment of Rs.62/- illegally and unauthorisedly. It is further alleged that one crate containing 20 empty bottles was filled from the cans by tampering/breaking open the seal and they were in

the process of filling another lot of 20 bottles from the can meant for Holy Family Hospital in connivance with each other. They are thus charged with unauthorisedly selling two crates of 40 half lt. milk filled bottles illegally and unauthorisedly to an outsider who was later identified as Sh. Ravinder and also tampering/breaking open the seal of the milk filled cans to fill 40 empty bottles for illegal sale with malafide intention and for pecuniary gains in connivance with each other which acts being dishonest are grossly unbecoming of Government servant in violation of Rule 3 of CCS(CCA) Rules, 1964."

The learned counsel for the applicant states that the statement of Shri Ravinder Kumar, which is a confessional statement, has been used when Shri Ravinder Kumar has not at all been examined. The statement of Shri Ravinder Kumar dated 13.5.86 recorded on the spot and signed by him reads as follows:

"I got 2 crates of milk from Driver and Mates on 13.5.86 after paying Rs.62/-. At that time a sky colour Matador No.4956-DHD came there, from which, Smt. Dham, AMDO and Km. K. Godwani got down and asked me that from where you have got this milk. Then I told that I have got this milk from van staff with request. They apprehended the van staff and asked them that from where they have given this milk. On this the van staff did not reply anything. The H.V.D. returned the money after taking back the milk"

It is attested by Smt. Dham, Assistant Milk Distribution Officer, Km. K. Godwani Milk Distribution Officer and Shri Kalam Singh, SCD, all of the raiding party. It may be

pertinent to mention here that the raiding party which was waiting just opposite the depot where the incident took place had caught the applicants red handed taking money and empty bottles from Shri Ravinder Kumar. The above statement of Shri Ravinder Kumar was recorded prior to the panchnama. Therefore, after perusing the depositions made, we are not satisfied with the contention of the applicants that the Enquiry Officer has no evidence to come such conclusion. Though he has mentioned about the confessional statement of

Shri Ravinder Kumar, even if it is excluded from the enquiry report, there is enough evidence from the depositions of the applicants and for the enquiry officer to come to such a conclusion as will be shown presently.

We notice that Smt. Dham, Assistant Milk Distribution Officer and Kum. Godwani, Milk Distribution Officer have been examined as prosecution witnesses. They have owned and endorsed the preliminary statement given by them containing the accusations against the applicant which are embodied in the charges. They were cross-examined by the applicants. English translations of their depositions are on record. We see that these witnesses could not be broken in cross-examination to make any statement contrary to what they had stated earlier. The evidence speaks of the panchnama recorded on the spot (i.e. Ex.3 of the DE) ^{& which} narrates all the events. Their evidence fully supports the charges made. We also find that no motive has been alleged against the raiding party to falsely implicate the applicants.

13. When the charged officials were examined by the Enquiry officer on 28.3.1987, Shri Giani Ram, one of the applicants has admitted in his examination as follows:

"Shri Ravinder Kumar had met us when we were unloading the goods at Depot No.234 at about 1.20 PM. He told that his brother will meet at his depot (Depot No.1296). Give him two crates and take Rs.62 from him and in lieu of it unload two crates less at depot No.1296. We reached at Depot No.1296 from Depot No 234 in 5-7 minutes. There a blue coloured vehicle of raiding party was parked. We had given two crates milk to the brother of Sh. Ravinder Kumar. Shri Sat Bhushan Mate took Rs.62 from him. On this both the members of raiding party said that "This is not a good deed". After their saying this we took back the milk from the brother of Sh. Ravinder Kumar and when Shri Sat Bhushan began to return money to him, then the raiding party took the money

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from the hand of Sh. Sat Bhushan. I do not remember that which member had took the money. We had got 40 empty bottles from the brother of Sh. Ravinder Kumar. We placed those bottles at depot in place of filled bottles. When the filled bottles had been taken from the brother of Sh. Ravinder Kumar, then empty bottles were returned to him. After this the raiding party prepared the recovery memo and we all put our signatures on the same. I do not remember as to whether the brother of Sh. Ravinder Kumar had signed the recovery memo or not, or had he given something in writing or not. I was working inside the van. The statement was read over and found correct."

14. The other three applicants also have made similar statements but with one difference. That relates to the identity of Ravinder Kumar. While applicant Giani Ram has stated that Ravinder Kumar met the van enroute and instructed that 2 crates be given to his brother and Rs.62 be taken from him, the other three delinquents have stated differently.

Applicant Kure Singh states, that a boy claiming to be Depot Manager of Depot 1296 instructed that his brother would meet them at Depot 1296 to whom 2 crates of milk had to be given. No name is mentioned. Both applicants, Sat Bhushan and Pritam Singh, state that the person whom they met en route was Arvind Kumar, Depot Manager of Depot 1296. The former further

states that Arvind Kumar asked them to give milk to his brother Ravinder Kumar who will meet them at depot 1296. The latter also states the same, but does not mention the name of the brother as Ravinder Kumar. That name is given later in his statement when referring to the return of Rs.62 to him.

It is thus clear that Ravinder Kumar was the brother of one Arvind Kumar claimed to be the Depot Manager of Depot 1296. The milk was given to Ravinder Kumar.

It is thus clear from the statements made by the delinquent officials that the following facts, viz., supply of 2 crates of milk to Ravinder Kumar, receipt of Rs.62 from

him, the intervention of the raiding party, taking away the milk from Ravinder Kumar and returning Rs.62 to him, are all admitted and proved even without the aid of the statement of Ravinder Kumar reproduced in para 11. This would not have been a misconduct if this supply was authorized. The applicants claim that the supply was made

on the direction of Arvind Kumar, Depot Manager, Depot 1296 who met them on the way and gave such direction. Therefore, the onus to prove this defence was on the applicants. They should have cited Arvind Kumar, the Depot Manager of Depot 1296 and the brother of Ravinder Kumar and examined him to establish their bonafides in the matter of supply of milk to Ravinder Kumar. This was not done. Likewise, it is proved that they had filled 20 bottles with milk from a can and had another 20 empty bottles. The onus is on them to explain this conduct. As it is, this circumstance strengthens the case against them about their misconduct.

17. The applicants have a grievance that the appellate order is perfunctory and is not a speaking order. We have seen that order at Annexure A-5. While this authority has considered all evidence on record, particular reference is made to the statement of Ravinder Kumar to clinch the issue. Therefore, it can not be said it is devoid of reasoning. It is true that the order could have been more analytical before the conclusion is reached. But in the view we have taken in the matter, we are satisfied that remanding the case to the appellate authority to pass a well reasoned order will be an exercise in futility. We are also of the view that in a case where we are deciding the case on merits, it is pointless to

recommend it to an appellate authority for a further order. Such an order may be passed only if no decision is rendered on merits.

18. The judgements cited by the learned counsel for the applicant, which are quoted below, are not applicable in the instant case as the infirmities on the basis of which those decisions were given are absent in this case.

1987(5) SLR -349 R.L.Razdan Vs. Development
Commissioner, Handicrafts and others

1986(1) SLR-470-R.P.Bhat Vs. UOI

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C.S.Sharma

19. Under the circumstances, we do not find any merit in the OAs to warrant our interference. Therefore the OAs are dismissed with no order as to costs.

20. Shri M.K.Gupta, learned counsel for the respondents is entitled to his fees for all the four cases.

(C.J. Roy)
Member (J)

(N.V.Krishnan)
Vice-Chairman(A)

/tvq/

True Copy.
Attested
M=ab
2/8/94.
PRITAM SINGH
Cont. Officer
Central Administrative Tribunal
Principal Bench
Fardkot House, New Delhi