

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No. 1128/89

New Delhi this 27th May, 1994.

CORAM:

Hon'ble Mr.S.R.Adige, Member(A)

Hon'ble Mrs.Lakshmi Swaminathan , Member(J)

Shri Khem Chand s/o Shri Hira Lal,  
r/o House No.130-A, Rampura, Delhi-110035,  
employed as Mate in Delhi Milk Scheme, West Patel  
Nagar, New Delhi-110008 .....Applicant.

By Advocate Shri S.N.Shukla .

Versus

1. Union of India,  
through the Secretary,  
Ministry of Agriculture,  
Department of Agriculture and Co-operation,  
Krishi Bhawan, New Delhi-110001.

2. The General Manager, Delhi Milk Scheme,  
West Patel Nagar, New Delhi-110008

.....Respondents.

By Advocate Shri Madhav Panikar

ORDER

By Hon'ble Mr.S.R.Adige, Member(A)

In this application, Shri Khem Chand, Mate,  
Delhi Milk Scheme has impugned the General Manager,  
Delhi Milk Scheme, appellate order dated 26.5.88  
(Annexure-All) reducing the applicant's pay by two  
stages in the time scale of pay of Rs.725-940/- for  
a period of two years with a bar on earning increments  
during this period but without postponing future  
increments; and treating the period from 4.3.82  
till the date of rejoining duty after re-instatement  
as dies-non.

2. The applicant was appointed as a Badli Worker  
on the post of Mate in Delhi Milk Scheme in 1965 and

was regularised as Mate on 1.6.69. On 8.5.81 he was charge-sheeted (Annexure-A1) under Rule 14 CCS(CCA) Rules, on the charge that on 30.4.81 when deployed at Milk Distribution Route No. 21(M) Van No. 137 under Ganpat Ram, Heavy Vehicle Driver, upon 100% checking within the security zone, 78 x ½ toned milk bottles, over and above the number reflected in the route schedule, were found hidden between the milk crates, allegedly placed thereby Sharif Ahmed, Mate in connivance with the Milk Van Staff. It is also alleged that Sharif Ahmed's statement was recorded on the spot who accepted his guilty. The applicant submitted written statement denying the charges and thereafter a joint inquiry was conducted against the applicant and the entire van staff. The Enquiry Officer submitted his report (Annexure-A2) holding that the charges against the charged officials stood proved, upon which the Disciplinary Authority by his order dated 4.3.82 (Annexure-A3) imposed the penalty of compulsory retirement from service. The applicant filed a review petition dated 17.3.82 (Annexure-A4) which was dismissed by the appellate authority on 4.6.82 (Annexure-A5). Thereupon the applicant filed a fresh review petition dated 23.2.83 (Annexure-A6) addressed to the President of India against the order dated 23.2.83, and the same was returned to the General Manager, Delhi Milk Scheme directing him to treat it as an appeal and dispose of the same, vide order dated 23.9.83 (Annexure-A7). The General Manager disposed of the same by confirming the penalty of compulsory retirement by order dated 3.4.84 (Annexure-A8), to which the applicant filed another review petition dated 26.5.84 addressed to the President of India. The

President by his order dated 20.2.88 observed and directed as follows:

- 2. On examination of records of the case, in the context of the present Review petition, the President has observed that the appeal of Shri Khem Chand, ex-mate was earlier rejected by the appellate authority and later on, when directed to review the decision, the appellate authority while reviewing, reduced the penalty of one of the co-accused viz. Shri Ganpat Ram, HVD, and provided no relief to Shri Khem Chand, ex-Mate. The President has also observed that the petitioner has been punished severely in comparison to the reduced punishment imposed on the co-accused Shri Ganpat Ram whereas all the four accused were equally responsible for committing the offence.
- 3. After taking into consideration all the facts of the case, the President is of the view that while imposing the penalty, the principles of natural justice have not been fully observed in this case. The President is therefore, of the opinion that the earlier appeal of Shri Khem Chand, Ex-Mate be reconsidered in view of the decision taken in the case of his co-accused, Shri Ganpat Ram, HVD.

Thereupon the Disciplinary authority modified his earlier order and imposed the lesser penalty of reduction of applicant's pay by two stages for a period of two years etc. vide impugned order dated 26.5-88 (Annexure-All), against which the applicant has now come to the Tribunal. The applicant rejoined duties on 30.5.88.

3. On behalf of the applicant Shri S.N. Shukla has argued that the applicant cannot be held guilty of mis-conduct merely on Sharif Ahmad's admission as the same was confined to himself. He further argued that during the enquiry, it could not be established that Sharif Ahmad had admitted his guilt. Shri Shukla has also urged that before passing the order to treat the period from 4.3.82 till the date of the applicant rejoining duties (30.5.88) as dies-non, the applicant should have been given an opportunity to show cause, which was

not done, as a result ~~of~~<sup>the</sup> F.R. 54(4) was not complied with and hence the Disciplinary Authority's order was vitiated.

4. We have perused the file relating to departmental enquiry against the applicant and the other members of the Van group which was produced for our inspection by the learned counsel for the respondents.

5. We are not persuaded to believe that the applicant was innocent of the charges levelled against him. It is well settled that in departmental enquiries, the Law of Evidence is not strictly applicable and the proof does not have to be established beyond reasonable doubt. It is the balance of probability that has to be seen, and in situation such as this where a group of staff members is assigned to do specific job of work jointly such as distribution of milk, it is highly unlikely that mis-conduct of this nature would be committed by anyone of them without knowledge, association and participation of others. In fact, the balance of probability is strongly in favour of connivance amongst the group members. We are, therefore, not inclined to interfere with the penalty imposed of reducing the applicant's pay by two stages in the time scale of Rs. 725-940 for a period of two years with a bar on earning increment but without postponing future increments.

6. However, in so far as question of treating the period from 4.3.1982 till the date the applicant rejoined (30.5.1988) is concerned,

we have some reservation. We notice that the applicant's review petition addressed to the President of India dated 26.5.84 was returned by the respondents with order directions thereon on 20.2.88 i.e. after a period of nearly four years and the applicant was in <sup>now</sup> ~~now~~ responsible for this delay. Hence, in all fairness, it would not be proper to penalise the applicant for sometime which was not of his making. Moreover, the impugned order dated 26.5.88 reducing the applicant's pay by two stages etc., actually replaced the earlier order of compulsory retirement and, therefore should normally have taken effect from the date the earlier penalty of compulsory retirement was imposed w.e.f. 4.3.82. Having regard to these facts, we are of the view that the period from 4.3.82 till 30.5.88 should be regularised by granting the applicant such leave as due to him and treating the balance period as extra-ordinary leave without pay, thus allowing the said period from 4.3.82 till 30.5.88 to count <sup>towards</sup> his seniority, pensionary benefits as well as increments, subject to the penalty imposed in the appellate order dated 26.5.88.

7. To summarise, therefore, we uphold the penalty <sup>order</sup> ~~order~~ contained in impugned ~~appellate authority~~ <sup>order</sup> order dated 26.5.88 but quash and set aside that portion of the order which directs that the period from 4.3.82 to 30.5.88 be treated as dies-non and direct that this period be regularised by granting the applicant such leave as <sup>is</sup> due to him, and treating the remaining period as extra-ordinary leave without pay.

8. No costs.

*L. Swaminathan*  
(L. SWAMINATHAN)  
MEMBER (J)

*S. R. Adige*  
(S. R. ADIGE)  
MEMBER (A)